APPENDIX.

APPENDIX

TO THE

CONGRESSIONAL RECORD.

The Subordination of the Military to the Civil Power the only Satisfactory Guarantee for Free Elections.

SPEECH OF HON. JAMES PHELPS,

OF CONNECTICUT,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 3, 1879,

On the bill (H. R. No. 1) making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes.

Mr. PHELPS. Mr. Chairman, at the last session of Congress the House of Representatives passed the usual bill for the support of the Army for the fiscal year ending June 30, 1880, by which nearly $27,000,000 were appropriated. It attached to and incorporated in the bill the following:

SEC. 6. That section 2002 of the Revised Statutes be amended so as to read as follows:

"No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States: *Provided*, That nothing contained in this section, as now amended, shall be held or deemed to abridge or affect the duty or power of the President of the United States, under section 5297 of the Revised Statutes, enacted under and to enable the United States to comply with section 4 of article 4 of the Constitution of the United States, on application of the Legislature or executive, as provided for in said section."

And that section 5528 of the Revised Statutes be amended so as to read as follows:

"Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than $5,000, and suffer imprisonment at hard labor not less than three months nor more than five years."

The Senate amended the bill by striking from it this section, and passed it as amended. The House non-concurred, and committees of conference were asked for and appointed. The majority of each committee reported a disagreement in final conference to their respective Houses, which reports were accepted, and the Forty-fifth Congress expired by constitutional limitation without the final passage of the bill. The Forty-sixth Congress is now by order of the President convened in extraordinary session for the consideration of this and another of the regular appropriation bills, which for similar reasons failed to become law.

By section 6 of the bill the two sections of the Revised Statutes referred to are so amended as to strike from them the words "or to keep the peace at the polls," which occur in each section immediately following the words "armed enemies of the United States." In all other respects the sections are preserved intact. No change is made except what is necessary to prevent improper interference by the Army with the free and independent exercise of the right of suffrage by every citizen lawfully entitled to it.

That the freedom of the ballot is one of the most valuable privileges connected with American citizenship is universally admitted. Democrats and republicans alike professedly insist upon it. It is the corner-stone of free popular government. Without its enjoyment, undisturbed by military domination, we are no longer freemen, but wear the shackles of a military despotism. If we have not the courage to break those shackles when an opportunity arises by which it may be done by constitutional and proper methods, we do not deserve to be freemen.

The subordination of the military to the civil power is a fundamental principle of free government which cannot be surrendered without the surrender of liberty itself. One of the principal grievances of the American colonies for which the British government was justly and eloquently arraigned by the author of the Declaration of Independence was that it had "sought to render the military independent of and superior to the civil power;" and another that it had "quartered large bodies of armed troops among the people of the colonies."

Under the provisions of those sections of the Revised Statutes, military supremacy over civil authority is re-established, and a greater grievance created than that of quartering soldiers upon the people. The injury is the more intolerable because inflicted, not by a monarchical government upon the inhabitants of colonial dependencies who are the subjects of the Crown, but by a republic professing to be paternal in all its relations to the people who claim to be, and under the Constitution and laws are intended to be, and in fact and of right are, the sovereign power. It is all the more unjustifiable because by virtue of it arbitrary power is placed in the hands of the President, who is *ex officio* Commander-in-Chief of the Army, to use, if he pleases, in controlling what in a free country should always be the free elections of the people. Upon a question of such vital importance, it is not a sufficient answer to the complaint to say that the President would never attempt to use the Army in such a manner as to subvert the liberties of the people.

The exercise of political power has a singular fascination over the minds of men, and the opportunity for its improper exercise is a dangerous bauble with which to tempt the best of them, when the passions and prejudices of partisan excitement incident to a national canvass which involves the supremacy of a party and the control of the immense patronage of a great government are in full operation. History repeats itself, and we should not allow ourselves to forget what ambitious schemes against liberty have been perpetrated by the use of the Army, without the sanction of law, by Cæsar and Cromwell and Napoleon. We may have a usurper sufficiently ambitious and unscrupulous to make the attempt under the claim that he is warranted by the law, and therefore guilty of no usurpation.

Indeed we have had something of very much the same character in the recent history of our own Government. Under the authority of the very words now sought to be repealed, a President fresh from the command of a victorious army, with the apparent object of continuing his party in power in several States of the Union, stationed portions of the United States Army at places where the people were lawfully assembled to elect State and Federal officers, and thereby prevented free elections. He caused to be made and unmade Legislatures of sovereign States by the arbitrary exercise of military force. He stationed soldiers in the halls of courts of justice when they were in session. He deposed judges and arrested and imprisoned citizens under the suspension of the *habeas corpus*. He concentrated portions of the Army and Navy around this Capitol during the session of Congress while the electoral votes for President and Vice-President were being counted, and committed almost every species of political tyranny in the interest of his party by way of subordinating civil to military rule, in violation of the rights of the people and of the spirit and genius of republican institutions. If the right to use the Army to keep the peace at the polls can be constitutionally exercised under this law, which I do not believe, it may at any time, under the false pretext of apprehended disorder, be seized upon as a justification for its use for merely partisan purposes. With such fresh and flagrant examples of military usurpation before us, we should be satisfied that the only safety to the country is in the abolishment of the apparent authority and with it all claims that might be sought to be justified under that pretended authority.

It is objected to the sixth section that it introduces into the bill irrelevant provisions in the shape of substantive legislation which is not germane to it. This is solely a question for the House to determine upon a point of order under its rules. The point was made, discussed, and overruled; and, on appeal taken, the decision of the Chair was held to be the judgment of the committee. That action was a final disposition of the question whether the section was subject to the point of order. Candor, however, requires the admission that this section is independent of the appropriation of money, which is the real and only legitimate purpose of the bill. The insertion of it was the tacking as a rider to an appropriation bill what might have been proposed as separate and independent legislation. In my judgment it would on general principles have been more politic to have so introduced it, and as a member of the joint committee which prepared the bill I favored that course, and only yielded, with others of the same opinion, to the prevailing will of a majority of the committee. Without reference to the question of its being germane to the bill, my convictions of the impolicy of the course are so well settled that I have prepared and on the first opportunity shall introduce

in the House and ask its reference to the Judiciary Committee, a bill amending the Revised Statutes in substantial conformity with what is undertaken in the sixth section of this bill. I shall do it in vindication of my objection, under any ordinary circumstances, to this mode of legislation. Though this has been decided to be germane, and perhaps is not extraneous, it cannot be denied that it is strictly an independent provision, which I would much prefer to have had introduced and disposed of independently of this bill. I believe in its present situation its adoption is embarrassed and the passage and approval of the bill seriously endangered, while as separate measures both might have been secured.

I disapprove of this method of procedure under any circumstances unless it is absolutely necessary for the redress of grievances, or in connection with other important and needful legislation which cannot otherwise be obtained. Democratic doctrine and practice have been generally against it; and if the provisions sought to be enforced by this section had been placed upon their independent merits, I believe the President could have given no reasons that would have satisfied the country for withholding his approval. If he had withheld it, there would have been opportunity for then incorporating them in the appropriation bill, and a sufficient justification for standing by them to the last. It would have been an eminently proper case for demanding redress of the unjustifiable grievance of using the Army to control elections in the interest of the party of which he is the official head.

But aside from the question of expediency, there is no doubt of the competency of Congress to legislate in this manner. The claim that it is revolutionary is absurd in the extreme. It is neither revolutionary nor has it been uncommon. The congressional annals of the country are filled with conspicuous instances of it; among which are the Wilmot proviso in 1847, the revision of the tariff in 1855, the prohibition of the use of the Army in support of certain territorial legislation in Kansas in 1856, the enactment of these very provisions authorizing the employment of the Army to keep the peace at the polls in 1865, the unsavory salary grab in 1873, the *posse comitatus* clause in 1878, and hundreds of other instances of lesser note, all which were tacked as riders to the regular annual bills of appropriation.

To show the opinion of the most distinguished leaders of the republican party in the Thirty-sixth Congress, I cite from the Congressional Globe of that period extracts from their speeches in support of an amendment to the Army appropriation bill prohibiting the use of the Army to enforce territorial legislation in Kansas, upon a question precisely analogous to the present, which contradict in the most explicit language the declarations of the present leaders of that party, and show that the proposed method of legislation is not only constitutional but usual, and may be necessary and expedient, and that the House of Representatives, with whom all bills for supplies must originate, is entitled to judge of the methods of legislation by which supplies shall be granted, and of the necessity and propriety of making them conditional upon the redress of real or alleged grievances.

Mr. Seward said:

Since the House of Representatives has power to pass such a bill distinctly, it has the power also to place an equivalent prohibition in any bill which it has constitutional power to pass. And so it has a constitutional right to place the prohibition in the annual Army appropriation bill. It is a right one if necessary to effect the object desired, and if that object is one that is in itself just and eminently important to the peace and happiness of the country, or to the security of the liberties of the people. The House of Representatives, moreover, is entitled to judge and determine for itself whether the proceeding is thus necessary, or whether the object of it is thus important.

Mr. Wilson said:

The Senator from Virginia tells us that when one House undertakes to force its opinion upon the other, and that policy is adhered to, revolution follows. Now, sir, it appears to me that the Senate is raising this question with the House of Representatives; and that if in the result this bill shall fail the responsibility of that failure will rest upon the Senate and not upon the House. The country will condemn, it must condemn this action of the Senate, this arrogant attempt to force its opinions upon the House of Representatives.

Mr. Wade said with his customary emphasis:

I say the House of Representatives have done right. Here we are told it is revolutionary, and therefore we must not breathe the breath of life into their action, but must permit it to go back to the House with an appeal to the House to recede. Sir, I do not know but that you may succeed under the idea that this is revolution; but, so help me God, I hope that the man who proposes to recede a hair's breadth from the action of the House will never find his way back again. Has it come to this, that if the House of Representatives do not think proper to frame a bill for the support of the Army of the country, appropriating twelve millions, in a way to satisfy the majority in this body, revolution shall follow and the responsibility be upon the House? Pray, sir, how? Because they will not agree to do as the Senate tells them they shall do.

Mr. Fessenden said in reply to Mr. Hunter:

Does he not know well that in the English Parliament from the earliest times not only have appropriation and revenue bills gone together, but in cases without number it has been the habit of that Parliament to check the power of the Crown by *annexing conditions* to their appropriation of money? Does he not know that the only mode in which our ancestors of Massachusetts checked the powers of their royal governors *was by granting money only on conditions?* The power of supply and the power of annexing conditions to supply have always gone together in parliamentary history; and their joint exercise has never been denounced as a case of revolution, or calling for revolution, or tending to produce revolution in any shape or form whatever. It is a power essential to the preservation of our liberties.

Mr. Giddings said:

I now come to the point that when we make an appropriation we may limit its expenditures. That principle has been held to be legitimate since the commencement of the Government.

I am only quoting precedents, and I call upon the Chair to examine that point that where we make an appropriation of money we, the Representatives of the people, may limit the expenditure in just such terms as we please.

Surely no gentlemen could be more distinctively the representative leaders of the republican party, then just organized, than those from whose able speeches I have quoted. They were indeed the distinguished fathers and founders of that great and successful party; and the course of its present leaders, whose intellectual stature, though very respectable, hardly equals theirs, shows how little reverence they have for the teachings of their predecessors and how difficult it always is for professional politicians to resist the temptation to yield to the partisan clamor of the hour.

It is logically premature to argue in advance of an executive veto against the proper exercise of that power with reference to a pending bill, but no opportunity for the discussion of that question may be afforded after the passage of the bill and its return to this House with the objections of the President, if it shall be so returned, which is earnestly desired and confidently expected by his friends.

The constitutional power of returning bills with his disapproval should only be exercised by the Executive with reference to the merits of the measures, and never with respect to the methods by which their passage is secured. I have shown by the highest republican authority that these are entirely within the discretion of Congress and wholly controlled by its parliamentary rules and practice. The fact, therefore, that the sixth section, which has been held by the House to be germane to the bill, is an independent provision does not make it the proper subject for the exercise of this power, and no precedent can be found for the veto of a bill for such a cause. It might subject a measure to criticism or protest, according to the temper of the President, but never to disapproval, unless there is something unconstitutional or improper in the independent provision itself.

Section 7 of article 1 of the Constitution provides that "every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it with his objections to the House in which it shall have originated," &c. He must approve and sign, or disapprove and return, the *bill*. The *subject-matter*, and not the *manner* of its enactment, is alone to be considered.

It is a great power, wisely given, to be wisely executed; not in the interest of party or section, but of the whole country. Otherwise it would not be the authoritative expression of the dispassionate judgment of the President, and would be unworthy of him. While I do not question but entirely approve the propriety of the exercise of this power by way of objection to legislation that is unconstitutional or dangerous on its merits, I cannot agree to the declaration which we have repeatedly heard in this discussion from gentlemen on the other side of this House that the President is, under the Constitution, a part of the legislative power of the Government. He is invested with the power of disapproval to enable him to use it when in his judgment it is necessary as a check upon the Legislature to prevent unsafe, improper, or unconstitutional legislation. This, however, no more makes him a part of the legislative department of the Government than the power which the Supreme Court has to declare an act of Congress unconstitutional makes the judicial a part of the legislative department.

The several departments are wholly independent within their respective limits, and may by their independent action have a check upon each other, but are possessed of no original power and can exercise no original functions except within their respective limits as constitutionally defined. The wise framers of the Constitution in the first clause of that instrument carefully and jealously guarded the jurisdiction of the Legislature from improper invasion by providing in section 1 of article 1 that "all legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." They could not have selected clearer language by which to prevent the usurpation of the legislative power by the executive and judicial departments of the Government. This brings me to inquire what there is in the sixth section of the bill which demands or can justify the disapproval of the President? Certainly nothing unless it be the denial to him of the power through the orders of the War Department to employ the Army of the United States to keep the peace at the polls. This is the only subject of controversy or difference in the bill. Upon a little sentence of eight monosyllables which had no existence in the law until 1865 hangs the whole issue involved in the entire bill, and the legislative history of that clause is briefly this:

The two sections, though now widely separated in the Revised Statutes, are parts of section 1 of chapter 52 of the act of February 25, 1865, entitled "An act to prevent officers of the Army and Navy and other persons engaged in the military and naval service of the United States from interfering in elections in the States," found on page 437 of volume 13 of the United States Statutes at Large. Prior to that recent period no authority of that doubtful and dangerous character over the free elections of the people had ever been given to or exercised by the President, and this had its origin in the heated passions that ruled the hour in the last year of the war of the rebellion, and could have been conceived at no other time. The act itself into which these words were interjected by way of amendment was in-

troduced in the Senate by Mr. Powell, of Kentucky, for the purpose of protecting the people of that and other border States which remained in the Union in the exercise of the right to participate in the election of their civil magistrates and other officers; a protection which became necessary in consequence of the arbitrary partisan manner in which republican election officials excluded Union democrats from the polls, and their ballots from the boxes, under cover of the orders of military officers enforced by the presence of soldiers at the polls.

The amendment was offered by Mr. Pomeroy, a republican Senator from the State of Kansas, and adopted against the votes of every democrat in the Senate. It is true they voted for the bill as thus amended to preserve the protection afforded by the other provisions in it, but never acquiesced in or accepted the odious principle contained in the amendment. It was a purely partisan measure, which I suppose accounts for the determination and unanimity with which the republicans now insist on retaining it in the law.

That the amendment is unconstitutional I do not entertain a doubt. The right to suppress disorder in the States belongs wholly to them through their civil authorities. It is not one of the powers delegated under the Constitution to the General Government, and is therefore reserved to the States. The only right of that character which the United States can constitutionally exercise is contained in section 4 of article 4, in these words:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

By this provision no authority is conferred to prevent or punish breaches of the peace. The States have made ample provision for that, and it would seem to be a flagrant violation of the Constitution and a usurpation of the rights of the States for the General Government to attempt the exercise of such a power, unless the violence became so formidable that the States in which it prevailed were unable to repress it, and made requisition upon the United States for assistance in the mode prescribed in the Constitution. The present distinguished Secretary of State, on the 20th of August, 1868, when Attorney-General of the United States, in a letter of instructions to the United States marshal for the northern district of Florida, used the following clear and decisive language on this subject:

The authority to suppress disorder and preserve the peace belongs exclusively to the civil authorities of the State.

Nothing can be added to the force of that declaration, and if its author reasserts it in the ear of the Executive he will have at least one member of his Cabinet to protest against the veto of this bill.

The right to command the presence of armed troops at the polls is abhorrent to the instincts of a free people. It is indeed utterly subversive of the principles of free government and destructive of freedom itself. A free election is impossible when even the shadow of military power falls upon the ballot-box. The loaded musket and fixed bayonet, and the human machine in whose hands they are placed, should never be permitted to approach the place where citizens are engaged in the exercise of the highest political prerogative with which they are invested under the law.

This principle is so fundamental and so thoroughly rooted in the Anglo-Saxon mind that even in the monarchy of Great Britain it was formulated into an enactment with all the sanctions of a statute as early as the eighth year of the reign of George II, in the following words:

Anno octavo Georgii II, c. 30. [1735.]

CAP. XXX.

An act for regulating the quartering of soldiers during the time of the elections of members to serve in Parliament.

Whereas by the ancient common law of this land all elections ought to be free; and whereas by an act passed in the third year of the reign of King Edward the First, of famous memory, it is commanded, upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election; and forasmuch as the freedom of elections of members to serve in Parliament is of the utmost consequence to the preservation of the rights and liberties of this kingdom, and whereas it hath been the usage and practice to cause any regiment, troop, or company, or any number of soldiers which hath been quartered in any city, borough, town, or place where any election of members to serve in Parliament hath been appointed to be made to remove and continue out of the same during the time of such election, except in such particular cases as are hereinafter specified: To the end, therefore, that the said usage and practice may be settled and established for the future, be it enacted by the King's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in Parliament assembled, and by the authority of the same, that when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or of any member or members to serve in Parliament, shall be appointed to be made, the secretary at war for the time being, or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall, and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders in writing for the removal of every such regiment, troop, or company, or other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place where such election shall be appointed to be made, out of every such city, borough, town, or place, one day at the least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, and not to make any nearer approach to such city, borough, town, or place, as aforesaid, until one day at the least after the poll to be taken at such election shall be ended and the poll-books closed.

The great English commentator, Judge Blackstone, in speaking of this statute, says:

And as it is essential to the very being of Parliament that elections should be absolutely free, therefore all undue influences upon the electors are illegal and strongly prohibited. Mr. Locke ranks it among those breaches of trust in the executive magistrate which, according to his notion, amount to a dissolution of the government if he employs the force, treasure, and offices of society to corrupt the representatives or openly to pre-engage the electors and prescribe what manner of persons shall be chosen.

"For thus to regulate the candidates of electors and new-model the ways of elections, what is it," says he, "but to cut up the government by the roots and poison every fountain of public security?"

As soon, therefore, as the time and place of election, either in counties or boroughs, are fixed, all soldiers quartered in the place are to remove one day before the election to the distance of two miles or more, and not to return until one day after the poll is ended.

Dr. Lieber, in his work on civil liberty and self-government, in speaking of elections, says:

It is especially necessary that the army be in abeyance, as it were, with reference to all subjects and movements appertaining to the question at issue. The English law requires the removal of the garrison from every place where a common election for Parliament is going on. Much more necessary is the total neutrality of the army in an election of the sort of which we now treat.

The statute was re-enacted in the tenth and eleventh of Victoria, chapter 21, as follows:

That on every day appointed for the nomination or for the election, or for taking the poll for the election, of a member to serve in Parliament, no soldier within two miles of the city, borough, or place where the nomination or election is to be declared or poll taken, shall be allowed to go out of the barracks or quarters in which he is stationed, unless for the purpose of mounting or relieving guard or of giving his vote at such election; and that every soldier allowed to go out for any such purpose within the limits aforesaid shall return to his barracks or quarters with all convenient speed as soon as his guard shall have relieved or vote tendered.

The able and accomplished lawyer now at the head of the War Department, in his work on elections, section 418, says:

There can, however, be no doubt but that the law looks with great disfavor upon anything like an interference by the military with the freedom of an election. An armed force in the neighborhood of the polls is almost of necessity a menace to the voters and an interference with their freedom and independence; and if such armed force be in the hands of or under the control of the partisan friends of any particular candidate or set of candidates, the probability of improper influence becomes still stronger.

Entertaining those views, consistency requires that he should unite in Cabinet council with the Secretary of State in protesting against the disapproval of the bill by the Executive.

Judge Cooley, in his work on Constitutional Limitations, under the title of the "freedom of elections," on page 614 says:

And with a just sense of the danger of military interference, where a trust is to be exercised, the highest as well as the most delicate in the whole machinery of government, it has not been thought unwise to prohibit the militia being called out on election days, even though for no other purpose than for enrolling and organizing them.

The ordinary police is the peace force of the State, and its presence suggests order, individual safety, and public security; but when the militia appear upon the stage, even though composed of citizen militia, the circumstances must be assumed to be extraordinary, and there is always an appearance of threatening and dangerous compulsion which might easily interfere seriously with that calm and unimpassioned discharge of the elector's duty which the law so justly favors. The soldier in organized ranks can know no law but such as is given him by his commanding officer, and when he appears at the polls there is necessarily a suggestion of the presence of an enemy, against whom he may be compelled to exercise the most extreme and destructive force, and that enemy must generally be the party out of power, while the authority that commands the force directed against them will be the executive authority of the State for the time being wielded by their opponents.

General Grant, while General of the Army, in speaking of the use of the Army at the polls in the Southern States, said, in contradiction and condemnation of his subsequent conduct when President:

It is consequently of the highest importance that the presence of a military force at the polls be not suffered except in serious emergencies, when disorders exist or are threatened for the suppression or prevention of which the ordinary peace force is insufficient; and any statute which should provide for or permit such presence as an unusual occurrence or except in the last resort, though it might not be void, would nevertheless be a serious invasion of constitutional right and should not be submitted to in a free government without vigorous remonstrance.

Mr. Seward, in speaking on the subject in 1856, said:

Civil liberty and a standing army for the purposes of civil police have never yet stood together, and never can stand together. If I am to choose, sir, between upholding laws in any part of this Republic which cannot be maintained without a standing army, or relinquishing the laws themselves, I give up the laws at once, by whomsoever they are made and by whatever authority; for either our system of government is radically wrong or such laws are unjust, unequal, and pernicious.

And, lastly, the gentleman from Ohio, [Mr. GARFIELD,] in discussing this bill, including the sixth section, and referring to these election provisions, said at the close of the last session:

I am free to admit for one that these enactments were passed at a period so different from the present that probably we can without serious harm in any direction muster them out, as we mustered out of service the victorious armies when the war was done. For myself, I see no serious practical objection to letting these sections go, &c.

Many of the constitutions and bills of rights of the several United States contain, in the most distinct and emphatic language, a declaration against the presence of the military at elections, and in none of them is there any expression which can be construed into the recognition of that right.

Why should the free people of this country longer tolerate the existence of a statute which authorizes the presence of the Army of the United States at the polls under the assumed pretext of keeping the peace? The law was demanded only as a war measure; and if there was any excuse for it during the rebellion or the stormy period of military State governments and of reconstruction which immediately followed, the excuse has passed away with the disappearance of those conditions. The rebellious States have long since accepted all the conditions imposed upon them, have returned to their allegiance and

been fully restored to their former position in the Union; their citizens have been graciously and fully amnestied; their elections are regularly held and fairly conducted; there are no unusual frauds or breaches of the peace at the polls; no citizens entitled to vote are denied suffrage; no State executives or Legislatures are calling upon the General Government for assistance to repel invasion or suppress domestic violence, and peace prevails throughout all the land.

There are and always have been occasional frauds and disturbances at elections everywhere, at the North and West as well as at the South. This is the natural if not the necessary consequence of partisan rivalry and excitement where unlimited popular suffrage prevails. It is especially so in cities where the rougher element in society exists in greater numbers and proportion than in the rural districts of the country. It was so before the war as much as since, and will always continue. In such localities, however, perfect provision to keep the peace is made through the police and other civil officers, who, by virtue of State authority, have the fullest power of arrest and of commanding assistance. The *posse comitatus* can be freely invoked in all needful emergencies. If in any extraordinary contingency these should be likely to prove insufficient, the State militia may be ordered out *en masse* by the governor. If by any possibility all these provisions should prove inadequate, the Legislature or governor may, under section 4 of article 4 of the Constitution, which I have already cited, call upon the United States for assistance and protection against domestic violence. Thus the amplest provision is made for the extremest possible emergency.

Where, then, is the necessity or excuse for continuing a law authorizing the President in his discretion to station troops at the polls, in advance of any disturbance and when no breach of the peace is either imminent or threatened? There can possibly be but one pretext for it, and that the desire and determination, for partisan purposes, to control by the exercise of military power what should always be the free elections of the people. Will the President refuse to approve a bill sanctioned by both Houses of Congress, which contains no other objection than that it takes from him the power to exercise this improper and arbitrary and unconstitutional authority? Especially, will he do it in the face of the fact that the gentleman from Ohio, [Mr. GARFIELD,] the acknowledged and very able leader of the President's party on this floor, and other gentlemen on that side, have admitted in this debate that if the repeal of this authority was proposed as an independent measure they would not oppose it? Will he venture to suffer his party to go to the country upon this issue on the admission by his friends that upon the merits of the question this side of the House is in the right, and with two leading members of his Cabinet committed against the propriety of the clauses we seek to repeal?

This brings me back for a moment to the consideration of the propriety of attaching to supply bills for the maintenance of the Government conditions demanding the redress of grievances. In the judgment of Congress, a grievance of the most serious character exists, and it demands in this bill that it shall be redressed; in other words, that it will give no money to support the Army except on condition that the authority in the President to employ it to keep the peace at the polls shall be abolished. What are the precedents? After Magna Charta, and for a long time prior to 1707, whenever grievances were imposed upon the House of Commons by the Crown, it demanded and obtained redress by refusing or conditionally granting supplies asked for by the Crown. The Commons declared that "unless they were secure in their liberties they would not give;" that "by the ancient course of Parliament, grievances had been first considered before supplies," and "that the redress of grievances and granting of supplies went hand in hand." Nothing was more common during that unsettled period of English history than controversies between the Commons and the Crown upon the subject of grievances and supplies, and they uniformly terminated in favor of the Commons.

The last British veto was in 1707, since which time the exercise of the power has not been attempted, because by an established principle of the British constitution the Commons could always enforce submission by compelling the ministry to resign, and there has since that time been practically no occasion for either the exercise of the veto power by the Crown or the conditional granting of supplies by the Commons, and both have fallen into disuse; but so long as the necessity continued the Commons never abandoned the right to withhold supplies to the Crown except on such conditions with respect to the redress of grievances as they deemed it proper to exact.

It has been said, and is undoubtedly historically true, that the House of Commons has not for a very long period attached to supply bills substantive legislation of a general character, but has only refused to furnish money to the Crown when the grievance which in their judgment required redress, related to the improper use of the royal prerogatives, or the granting of oppressive monopolies, or the prosecution of foreign wars, or the payment of the King's debts, or other subjects of a similar character. The principle, however, of granting appropriations conditionally is not affected by the character of the grievance. The objection rests upon the principle of the coercion of one department of the government by another; and the independence of the department which it is claimed is sought to be coerced is as much invaded when the grievance relates to the unconstitutional use of the Army as when it relates to the improper use of a royal prerogative. Indeed the two cases are not in principle dissimilar.

In the pending bill, the amendments proposed to the Revised Statutes apply only to the restriction of the use of the Army in a particular manner, and for a certain purpose, and the amount which should be appropriated is necessarily to a greater or less extent properly dependent on the enforcement of the restriction.

By section 8 of article 1 of the Constitution, Congress "may make rules for the government and regulation of the land and naval forces." Under this authority it may direct that under a certain sum appropriated the Army shall only be used in a manner conformable to the amount and purposes of the appropriation, and may well provide that the sum given shall be conditional on such restriction.

In this country, as I have already endeavored to show, the instances in which general legislation has been attached to the regular appropriation bills have been very numerous and frequent. Some of them have trenched much more upon the independence of the Executive or of one branch of the Legislature than the bill now under consideration. In at least two instances before the present, extra sessions of Congress have been convened because the Army appropriation has for reasons similar to those which now exist failed to become law. The present condition of affairs is therefore not unprecedented in our parliamentary history. The amendment relating to the use of the Army in enforcing local and pretended territorial legislation in Kansas in the Thirty-fourth Congress, before alluded to, and that in the Forty-fourth Congress, prohibiting its use to uphold a usurped and fraudulent government in Louisiana, which the President himself afterward abandoned, were in all essential particulars substantially analogous to the present. The apparent crisis which each produced passed without serious consequences to the country. Those were differences between the Senate and the House of Representatives, and I believe the Senate yielded in both cases, and it is hoped a way out of the present difficulty will be found which will inflict no injury on the country or reflect any dishonor upon either the executive or the legislative department of the Government.

The proposed legislation is not hasty, or inconsiderate, or dangerous, or unwise; it subverts no provision or principle of the Constitution, but is offered in its defense; it improperly coerces no other department of the Government, nor the co-ordinate branch of this department; it usurps no unlawful prerogative; it violates no rule or practice of either House of Congress. It simply seeks to forever abolish from the statutes of the United States certain provisions clearly repugnant to the principles of free government under which it is in the power of the President, by the use of the Army for partisan purposes, to destroy the freedom of elections and with it the liberties of the people.

Why, then, should there be an executive disapproval of it? Aside from the well-established fact that the *method* of legislation with respect to all appropriation bills is entirely within the discretion of the House of Representatives under its rules, it seems impossible for the President, without an inconsistency which he will find it difficult upon any principle of sound statesmanship to reconcile, to disapprove and return the bill on the ground that it contains extraneous provisions, because the record shows that when he was a member of this House he voted for amendments to appropriation bills incorporating independent legislation. He also voted for articles of impeachment of Andrew Johnson because he was charged among other official irregularities with having improperly exercised the veto power.

If he places his disapproval on the ground that the sixth section of the bill is coercive, and therefore improper, the answer is that all extraneous legislation of a partisan character in appropriation bills, when the two Houses of Congress differ politically from each other, or when both differ from the Executive, is designed to be, and in its nature must from necessity in a certain sense be, coercive. But this section does not differ, except favorably, from other legislation of the same character, of which so many examples have been cited, not one of which was ever for that reason made the subject of a veto. If there shall be a veto in this case, under whatever pretext made, it must be without precedent, and can be susceptible of but one construction, and that will be that so far as rests in his power the President has determined that the republican party shall continue to use the Army of the United States to control the elections of the people.

The Counterpart of the Rebellion.

SPEECH OF HON. J. I. MITCHELL,

OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. MITCHELL. Mr. Chairman, I should not at this stage of what I consider a great and high debate contribute one word to this discussion did I not feel it a duty to my constituents to do so. I am quite aware that I should be able, had I the fullest opportunity, to add but

little to the weight of argument upon my own side, or greatly to weaken an already waning faith upon the other. The argument has related principally to two questions—one of constitutional law, the other of legislative expediency and necessity.

I have listened to or read the arguments of most weight upon both sides, and am confirmed in my first opinion that the republican position is right, expedient, patriotic, and impregnable.

I shall therefore abide by it and rest in the confident belief that great benefit to our new Republic will flow from this conflict of purposes and opinions on the one side and the other, revealing as it does the real spirit and object of both parties.

There has latterly been too much of surface pretension that our late family quarrel was all happily arranged, and too much suppression of the deep-seated feelings which everybody knows lie at the bottom of our continued sectional differences. I would not welcome, and trust we may all reasonably refrain from, impulsive and acrimonious crimination and recrimination; but I think that at last some men on both sides speak out openly, earnestly, and, I hope, conscientiously, their inmost feelings and opinions.

Men of the North and of the South, sharers of the greatest and sublimest national destiny yet probable as the fruitage of civilization among men, if we but wisely and righteously strive together to garner and secure it for ourselves and our children, what answer shall we give to the vital and momentous questions of the hour? Shall we wisely and charitably discharge the great trust divinely committed to our hands pursuant to its eternal conditions precedent ordained by the Supreme Lawgiver, or meanly and unrighteously betray it for a mess of pottage? To this omnipotent voice we must give faithful answer, whether we will or no. It cannot be by confession and avoidance; it must be by repentance and a new birth, by honest profession of a righteous national creed, and by strict observance thereof in our national walk.

My purpose in presenting my views at this time, out of the ordinary current of this discussion, is to inquire into the abstract principles involved in the pending conflict of opinions and prejudices rather than to attempt to add to the already exhaustive argument upon the concrete questions pending before us. In attempting, however, to discover the spirit of these antagonistic political forces I shall endeavor to exemplify and, so to speak, to incarnate them by examples illustrating the formulated policies of opposing political parties. I have supreme and abiding confidence in the ultimate reign of truth and right. For a time unrighteous usurpation may suspend it, but such usurping forces in history have ever been temporary only, and legitimate authority has erewhile been fully recognized.

This world is a conflict, and civilization is its product. Law rules it, and the Lawgiver is before and above the law. The survival of the fittest is in the end the triumph of the best. Right sleeps, but never dies. True royalty is righteousness in man the individual, man the citizen, and among men the state. True manhood, therefore, is "the best fruit of the ages," and Christian civilization the best gift of time. But as no man by man begotten is without sin, no party or nation is above reproach. Man aspires more to conquer others than to rule himself, and self-aggrandizement is the law of nature, of nations, and of political associations. If many join together for a common object, each inclines to pursue his own when that is attained.

The world is divided politically into nations, parties, and factions, each striving for its own object or opposing that of another. Hence the radical, the conservative. Too often a wicked cabal sits behind the throne in each, secretly using a specious platform for private and selfish purposes. In the end, thank God, the mask falls off, and the hideous man, the wicked cabal, the selfish faction, the unrighteous party, the unchristian nation, appears in the open light of public opinion and comes to naught.

Trite as they may appear, I believe these truths have pertinence the present hour. Over and over again in history they have ruled an epoch, but their complete and overruling force has not yet borne full sway. John said "the kingdom of heaven is at hand," but the mandate of temporal authority imprisoned and beheaded him. Christ himself refused the office of temporal judgship, and counseled obedience to the reign of Cæsar, under which he was crucified. His own chosen few, supposing his kingdom to be of this world, began early to plot for office and ease and spoils. Pilot found no fault in Jesus, but delivered him to the cross when the multitude clamored that without this he was no friend of Cæsar, whose commission he held! He was emphatically opposed to losing his official or his natural head, and consented to betray his Eternal King for fear of his earthly sovereign. It is ever so, thus far in time. "What o'clock?" says the king. "Whatever time your majesty pleases," says the courtier. We are all, in some sense, I fear, the subjects or courtiers of some earthly sovereign, too often forgetful of our superior obligation to the King that never dies.

Thus, two laws have force, two kingdoms are extant, in this earth; the one material and temporal, the other spiritual and eternal; the one expedient as man declares, superior for its day; the other, right, as God ordains, supreme forever! Against the one men, for just cause, appealing to the other, may rebel and triumph; against the other, they must not contend, "lest haply they be found fighting against God, and come to naught!"

Intrenched never so strongly in human "constitutions" wrong must ever yield to this superior right and power which is before and above them all, and the fiat of the Almighty Lawgiver have its sway.

All constitutions grow, or simply declare a former growth, by symbols intended to be comprehensible to man. Great principles, fixed and rational belief, and righteous faith, for which men have contended, suffered, and died, or are henceforth willing to do so, are the only true and substantial foundations of organic law and human government. To formulate these principles, to symbolize this belief, and to incarnate this living faith for which men are willing to endure the cross, is the most gigantic temporal work required of the intellect and mind of man in any age and in every nation. Higher mission for these there is none on this earth, save that which enters within the veil in search of the hidden springs of eternal life! And between these two, finally, there is little difference.

Contending for such principles, struggling for the verification of such belief among men, and striving for the embodiment of such faith in a constitution of free government, our forefathers pronounced their creed in face of the divine right of kings, and for its fulfillment pledged and offered up their lives, their fortunes, and their sacred honor.

When, in the end, this creed became a living fact, they sought to embody it in a written Constitution. Of this their work William E. Gladstone, a subject of the government against which they rebelled and among the wisest of living statesmen, speaking of the British constitution and our own, has recently said:

> The two constitutions of the two countries express indeed rather the differences than the resemblances of the nations. The one is a thing grown, the other a thing made; the one a *praxis*, the other a *poiesis*; the one the offspring of tendency and indeterminate time, the other of choice and of an epoch. But as the British constitution is the most subtle organism which has proceeded from the womb and long gestation of history, so the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man. It has had a century of trial under the pressure of exigencies caused by an expansion unexampled in point of rapidity and range, and its exemption from formal changes, though not entire, has certainly proved the sagacity of the constructors and the stubborn strength of the fabric.

Nevertheless, its theory of equal rights and freedom of all men was marred in its letter from the beginning, and has never to this moment been wholly and faithfully exemplified by our practice under it. The word slave found no place in it, but slavery was expressly recognized, and, as the event has proven, almost irrevocably intrenched within it. The kidnaping of men, to be held slaves under it, was expressly sanctioned by it. Every northern man was at one time required by law enacted under it to be a slave-catcher, and denied the right to furnish a crust of bread to colored men fleeing for liberty from its bonds. For three quarters of a century husbands, wives, parents, and children, whom nature and nature's God had "joined together," were sold and separated at the auction-block under it without mercy or remedy. By this human outrage, by men named law, men were wickedly denied knowledge of the law divine, and the Sermon on the Mount was made for the slave a sealed book. Slaves were chased by bloodhounds, cruelly beaten, bruised, maimed, and murdered without punishment for their persecutors or murderers.

The liberty of speech and of the press was denied to prevent interference with the "peculiar institution." It was made a crime by democratic act of Congress to speak against slavery in territory of the Government which the fathers of the Constitution had forever set apart to freedom! Men who were conscientiously opposed to this crime against nature were, for such cause, prohibited from sitting on juries in the courts. Here was a test oath for you! Now it is considered offensive to permit the courts to say, in their discretion, that men who fought to destroy the Government and to perpetuate slavery shall not sit upon juries trying ex-slaves for offenses charged against them. And this is a "war measure" which is to be stricken from the statute-book as a "vestige" which "looked to the abridgment of the liberty of the citizen," and thus it is now proposed by the democracy "to celebrate her recovery of her long-lost heritage." Verily a fitting celebration for such inheritors!

All these things in this our beloved country, under a constitution founded upon the declaration "that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." The civilized world looked on with horror. Three generations of men came and went while this living, fearful shame and crime polluted the fair land of their birth. Ministers of the living Jesus desecrated the pulpit in its defense. Statesmen bowed the knee before it, and courted political honors for such mean submission. When a philosopher petitioned on his knees before Dionysius, he excused the act by the righteousness of his object: "It is not my fault, but the fault of Dionysius, that his ears are in his feet." The American "doughface" was *particeps criminis*, and therefore could not excuse, much less justify, his pusilanimity. Yet it is to such men that the gentleman from Mississippi [Mr. CHALMERS] has paid this high tribute upon the floor of this House in this debate:

> In response to my gallant democratic friend from Ohio [Mr. EWING] who paid such a handsome compliment to the South I have a word to say. There was a time when I as a southern democrat believed that the position of northern democrats in the war was hateful. But, sir, I have learned to believe that the time will come when the historian will write it down that the northern democrats were the truest patriots in this country. They imitated the example of their old leader, Andrew Jackson. It will be remembered that when on the plains of Florida the militia, claiming that their enlistment had expired, attempted to return home, "Old Hickory," with the old flag in his hand, rallied the volunteers and drove the militia back to their places. When upon the next occasion the volunteers undertook to leave, he, with that same old flag in his hand, rallied the militia and drove the volunteers back to their places. So, sir, the historian will say that when the southern democrats undertook to leave the Union, the gallant democrat of the North,

with the old flag in his hand, rallied the republican party and drove them back into the Union.

When the war was closed and the republican party undertook to destroy the Constitution, history will say that the same gallant northern democracy, with the same flag in their hand, rallied the southern democrats and drove the republicans back to their duty. [Applause.] We, sir, in the South loved the Constitution more than the Union; the republican party loved the Union more than the Constitution; but it will be written in history that the gallant democracy of the North were the truest patriots of the land, and that they loved both the Union and the Constitution, one and indivisible. [Great applause.]

If he speaks of war democrats, such as the lamented Dix, whose patriotic order of 1861 speaks forth from his new-made grave to-day his living and dying faith, "If any man haul down the American flag shoot him on the spot," we say with all our hearts Amen; "they imitated the example of their old leader, Andrew Jackson." If, as I think, he speaks of the leaders of the peace democracy, who said, "There is no power under the Constitution to suppress the rebellion, and we will not vote a man or a dollar for this nigger war," let the applause come as it did in this case from the democratic majority upon this floor, ruled and ignominiously led as it is by the leaders of the late rebellion.

While for two generations the air of our mother country had been held too pure to be polluted by the breath of a slave, the atmosphere of this Republic grew foul, fetid, and putrid with this infectious disease, and was finally purified and disinfected, or attempted to be, by the heroic sacrifice of her best blood and uncounted millions of her treasure. This winnowing process is from above. Then again in history the sword of righteousness proved sharper than man's battle-ax of human authority. "Irrepressible Conflict" went on and "Higher Law" had its sway.

How far forth? Thus far: The organic law which had so long refused to formulate the Great Idea of 1776 was literally amended in consonance with the voice of God uttered for emancipation, and four million slaves were declared henceforth free men! This declaration, in harmony with that voice, is not fully realized. It must, and in God's way and time will, have full force and effect.

The Reformation landed at Plymouth Rock; it colonized free thought in New England and westward had its empire till every man and every State in the North was free; it set in motion the moral sentiment which alone made our late quarrel just, and brought victory for right, ordained by God, not expediency declared by man, at Appomattox.

We of the North fought for union and the right, not for union with the wrong which sought to destroy our very existence as a nation. The cause of the war which was lost became, how and by what means God knoweth, the object of the war which was gained.

Then reconstruction on this high basis. Again, what work for men! Men impassioned with the heat of that terrible strife; men crucified by the ordeal of that horrible wrong; men whose sons had fallen, whose daughters were widowed, whose wives grew gray with the awful weight of grief when the battle raged and fear of the last full measure of love's ordeal trembled in their souls, had charge of this great work; and yet Charity, the sublimest of all gifts and the wisest of all guides, in the endeavor, as Mr. Lincoln said, "to bind up the nation's wounds," ruled the hour and sought a place in the hearts of those who had been wrongfully led to fight against charity and in a wicked cause for the destruction of their country. In the hour of victory Horace Greeley uttered the sublime sentiment, "Magnanimity in triumph." The first answer came: Abraham Lincoln is assassinated. Still his cry was: "The greatest of all is charity." The manly sense of the men who fought for "the lost cause" condemned the wicked act of the assassin as the soul of honor at the South spurned at the close of the war the craven spirit of the copperhead; but at last it has allied itself with the only party at the North in which that spirit was enshrined.

In this process of reconstruction this divine guidance of charity was never disregarded. It found expression in law and policy which exacted no blood for the crime of rebellion, and which enforced no mean submission of the conquered. No higher exemplar of national magnanimity and liberality to the vanquished can be found in history. But it coupled divine justice to the oppressed with divine mercy to the erring, and demanded the observance of the one with the reign of the other. "Universal amnesty and impartial suffrage," wrote Horace Greeley, and the republican party enacted this theory into the laws of reconstruction. Amnesty is realized and no one questions its continuance; free suffrage is the law, but is not the fact; the theory, not the practice. The grant of amnesty and full representation for the freedmen at the South has been accepted, and has resulted in a large increase of power to that section in the National Government. Free suffrage, the inherent condition of this grant, has not been performed. It has been substantially abrogated and rendered void. I want no report of investigating committees to satisfy me of this fact. It is patent in the current history of the time.

Kuklux, white leagues, shot-gun policy, persecution and murder of colored men, election frauds, and a most effective and systematic "bulldozing" in many parts of the South all attest it. The colored exodus of thousands fleeing from such persecutions, a most portentous and significant sign of the times, confirms it. "Let my people go" is a command of the divine law not yet obsolete. That is one "war measure" which cannot be repealed. That any cause to invoke it exists is to be lamented. I would that none did exist. Every material interest, North and South, must suffer greatly if this movement shall continue, but the spiritual is above the material interest, and must be secure. Again, the "higher law" will rule in this conflict of "opposing and enduring forces." It is the same conflict of caste and tyranny under new forms against equal rights and liberty as of old.

When we declared freedom universal among us it did not exist. "Truth is the double of that which is," says Bacon. Therefore this declaration to be effective must go into act, must be realized in law, not simply made, but executed. The fact must become the complement and counterpart of its declaration. Were that the case our greatest difference would be at an end, and all would be the better for it.

"Sure I am that the Lord will avenge the poor and maintain the cause of the helpless.

"Except the Lord build the house their labor is but lost who build it.

"Every kingdom divided against itself is brought to desolation."

Are we as a people still "divided" against ourselves? Are we still in danger of being "brought to desolation?" It behooves us, if possible, to find a truthful answer to this question. Let us follow the development of the "irrepressible conflict" and see whether it be not still impending over us.

In 1866 ALEXANDER H. STEPHENS, vice-president of the late Confederate States, in a speech delivered before the Legislature of Georgia, made this declaration:

As for myself, I can affirm that no sentiment of disloyalty to those great principles of self-government recognized and embodied in the Constitution of the United States ever beat or throbbed in breast or heart of mine.

Whatever differences existed among us arose from differences as to the best means of securing the great end which was the object of all. It was with this view and for this purpose secession was tried. That has failed.

* * * * * * *

Our only alternative now is either to give up all hope of constitutional liberty or to retrace our steps and look for its vindication and maintenance in the forums of reason and justice instead of in the arena of arms—in the courts and halls of legislation instead of on the field of battle.

The "differences" to which he refers are those which gave rise to the conflict between freedom and slavery. In his speech at Savannah in 1861 he said:

The new constitution has put at rest forever all the agitating questions relating to our peculiar institution. African slavery as it exists among us is the proper status of the negro in our form of civilization. * * * The prevailing ideas entertained by Jefferson and most of the leading statesmen at the time of the formation of the old Constitution were that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. * * * Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of the races. This was an error. It was a sandy foundation, and the government built upon it fell when the "storm came and the wind blew."

Our new goverment [of the late confederacy] is founded upon exactly the opposite idea, its foundations are laid, its corner-stone rests upon the great truth that the negro is not equal to the white man, that slavery—subordination to the superior race—is his natural and normal condition. This our new government is the first in the history of the world based upon this great physical, philosophical, and moral [?] truth. * * * If we are true to ourselves, true to our cause, true to our destiny, true to our high mission in presenting to the world the highest type of civilization [?] ever exhibited by man, there will be found in our lexicon no such word as fail.

I do not quote these words to stir up any bitterness, least of all to express any feeling of unkindness on my part toward the distinguished gentleman from Georgia, [Mr. STEPHENS,] to whose utterances in this House I always listen with reverence if not approval. I consider him a historic man of the age who never forgets the logic of the past, of which he is part, nor its connection with the living issues of the present, which he has done so much to define and keep alive. I quote them because I accept them as a clear and earnest expression of his sincere belief and as an exposition of the living faith of the ruling class at the South. I am not weak enough to admit that our countrymen of the South who endured the sacrifices of the late war so heroically did not or still do not earnestly and sincerely believe in the ruling idea, as stated by Mr. STEPHENS, for which they fought and still contend. They grew up under and into that belief. When they failed in their attempt to enact it into organic government they did not, by reason of that failure, cease to believe in it. Superior force even of conquering battalions cannot extinguish a spiritual belief. Carlyle says:

Every new opinion at its starting is precisely in a minority of one. In one man's head alone there it dwells as yet. One man alone of the whole world believes it. There is one man against all men. That he take a sword and try to propagate with that will do little for him. You must first get your sword. * * * I care little about the sword. I will allow a thing to struggle for itself in this world with any sword or tongue or implement it has or can lay hold of. * * * What is better than itself it cannot put away, but only what is worse. In this great duel nature herself is umpire and can do no wrong. The thing which is deepest-rooted in nature, what we call truth, that thing and not the other will be found growing at last.

Did the idea which caused secession die with the war, or does it now "look for its vindication and maintenance in the forum of reason and justice; in the courts and halls of legislation instead of on the field of battle?" Let us see.

In 1873 the Southern Historical Society was organized in Virginia. Jefferson Davis and many leading spirits in the late rebellion were present. Its object was stated by its general agent as follows:

It is not only for securing before it is too late the material for a true history of the war that "The Southern Historical Society" will in its legitimate operations become an instrumentality of incalculable benefit to the South. Having enrolled among its members the true exponents of southern honor and intelligence, it will necessarily possess a vitality and exert a moral influence through the whole South which will steadily and irresistibly expand into an antagonism powerful to repel the insidious advances of those vicious principles which are now so fearfully undermining the civilization of the North.

WADE HAMPTON, in a speech before this society, so late as October, 1873, said:

As it was the duty of every man to devote himself to the service of his country in the great struggle which has just ended so disastrously, not only to the South, but to the cause of constitutional government under republican institutions in the New World, so now, when that country is prostrate in the dust, weeping for her dead who died in vain to save her liberties, every patriotic impulse should urge her surviving children to vindicate the great principles for which she fought.

These are the imperative duties imposed upon us of the South, and the chief peril of the times is that, in our despair at the evil that has befallen us, we forget these obligations to the eternal principle for which we fought; to the martyred dead who gave up their lives for their principles, * * * and to our children who should be taught to cling to them with unswerving fidelity. If those who are to come after us, and to whose hands the destinies of our country are soon to be committed, are properly instructed in the theory and practice of republican institutions; if they are made to comprehend the origin, progress, and culmination of that great controversy between the antagonistic sections of this continent which began in the convention of 1789 and ended for the time being at Appomattox in 1865, they cannot fail to see that truth, right, justice, were on the side of their fathers, and they will surely strive to bring back to the Republic those cardinal principles on which it was founded and on which alone it can exist. * * * Maid, mother, wife gave freely to that country the most cherished objects of their affections. * * * It is theirs to teach our children that their fathers were neither traitors nor rebels; that we believed as firmly as in the eternal Word of God that we were in the right, and that we have a settled faith which no trials can shake that, in His own good time, the right will be made manifest.

I quote now from an annual address by General John S. Preston, of South Carolina, delivered before the alumni of the University of Virginia, on its fiftieth anniversary, July 1, 1875. Speaking of the Pilgrims who landed on Plymouth Rock, and the Cavaliers who landed at Jamestown, he said:

The Mayflower freight, under the laws of England, was heresy and crime. The Jamestown emigrant was an English freeman loyal to his country and his God, with England's honor in his heart and English piety in his soul, and carrying in his right hand the charters, usages, and the laws which were achieving the regeneration of England. * * * These two people spoke the same language, and nominally read the same Bible, but, like the offspring of the Syrian princess, they were two manner of people, and they could not coalesce or commune. Their feud began beyond the broad Atlantic, and has never ceased on its western shores. Not space or time, or the convenience of any human law, or the power of any human arm can reconcile institutions for the turbulent fanatic of Plymouth Rock and the God-fearing Christian of Jamestown. You may assign them to the closest territorial proximity, with all the forms, modes, and shows of civilization, but you can never cement them into the bonds of brotherhood. Great nature, in her supremest law, forbids it. Territorial localization drove them to a hollow and unnatural armistice in effecting their segregation from England—the one for the lucre of traffic, the other to obtain a more perfect law of liberty; the one to destroy foreign tea, the other to drive out foreign tyrants, the one to offer thanksgiving for the fruits of the earth, the other to celebrate the gift of grace in the birth of Christ.

How to overturn the civilization of the North, to undermine and bury Plymouth Rock and rear over its grave the goddess of the "lost cause," which is to be regained, he explains as follows:

It is only by true knowledge of the past that those who come after us can be made the patriots and the heroes whose high destiny it may be to conduct their country to deliverance and liberty. If, then, this function is truly performed our vocation is to unveil the foulest crime which stains the annals of human history by unfolding the causes and relating the facts and results of the recent war between New England and the Confederate States. Let your historians tell it to posterity, and your poets sing of it in funeral chant. But let them, with it, say we were not subdued when Lee surrendered his starvelings at Appomattox.

Thus this descendant of the cavaliers who, he says, fought the battles of the Revolution "to celebrate the gift of grace in the birth of Christ" sings the praises of the secession movement, the corner-stone of which was African slavery, "the highest type of civilization ever exhibited by man." John Wesley characterized slavery as "the sum of all villainies." Thomas Jefferson, speaking of it, said, "I tremble for my country when I reflect that God is just." The voice of God from the cannon's mouth spake it out of existence; yet it is coupled with "the gift of grace in the birth of Christ" as a memorial lesson in this "foremost school of letters, science, and philosophy in the New World," so late as the 1st of July, 1875!

At a reunion of the late rebel army of Tennessee in 1878, Jefferson Davis was present, and in the opening prayer by Rev. Dr. Witherspoon, of New Orleans, the following invocation was offered up:

We invoke Thy blessings upon him who stands as the head and representative of a lost cause in fact, but we trust not in our hearts lost, or in the hearts of thousands of those who are not bodily present to-day.

Mr. Davis delivered an address from which I make the following extracts:

Permit me to say of the controverted right of secession by a State from the Union, of which it was a member by compact voluntarily made, that my faith in that right as an inherent attribute of State sovereignty was adopted early in life, was confirmed by the study and observation of later years, and has passed unchanged and unshaken through the severe ordeal to which it has been subjected.

Without desire for a political future, only anxious for the supremacy of the truths on which the Union was founded, and which I believe to be essential to the prosperity and liberties of the people, it is little to assume that I shall die as I have lived, firm in the State-rights faith.

* * * * * * * *

Suffice it to say the historical facts from which the right is deducible can only be overthrown by the demolition of the principles on which the Government of our fathers was ordained and established. The independence and sovereignty of the State carried with it the obligation of the allegiance of the citizen to his State. To refuse to defend it when invaded would be treason. To respond to its call and go forth with those who "hung the banner on the outer wall" was a legal duty to his home and all it held dear, alike binding on the father, the brother, the son, the citizen.

You struck for independence and were unsuccessful. You agreed to return to the Union and abide by the Constitution and the laws made in conformity with it. Thus far, no further, do I understand your promise to extend.

Here is a plain, defiant definition of the asserted right of secession by "the head and representative of the lost cause," in fact, made publicly, before men who fought for it full thirteen years after it was shot to pieces by the soldiers of the Union! Even now this arch traitor says that for a citizen of any State in this Union to "refuse to defend it" against the Army of the United States when "invaded" for defense of the Union "would be treason." This is the theory upon which the rebellion was waged, but we of the North had supposed that it was extinguished by the arbitrament of the sword. If the war meant anything, it means this; and yet we have heard the same doctrine announced by the gentleman from Mississippi, [Mr. SINGLETON,] the friend and coadjutor of Mr. Davis in the rebellion, on the floor of this House within the last two years. What, I ask, in this view, is to prevent a new rebellion for the same or for any other cause? Did the war utter no voice against it? Did the sword, dripping with the blood of men who fell fighting for the Constitution, write no legible hand for the Union?

In view of this survival of "the lost cause" and revival of this active and still living spirit of secession, I do not wonder the question is now mooted: "Wherefore the war?" The democratic party now rules both Houses of Congress. Nearly two to one of the democrats in each House come from the South; therefore the solid South rules the democratic party and southern supremacy stares us in the face in the nation. This is a momentous and portentous event which I trust northern people begin to understand.

In this connection I quote the following poem, which I believe expresses a widely-extended feeling at the North:

MY CHILD'S QUESTION.

"Papa, what made you go to war?"
Said Jennie, climbing from a chair
Upon my lap; "what did you for?"
And then she hugged me like a bear,
"'Cause if you hadn't gone you see
You'd have two legs to canter me."

"Why, child, I went because"—and then
I stopped to think. Of course I knew
I'd often told her brother Ben
When the recital thrilled me through.
And still she urged, "What did you for?
Papa, what made you go to war?"

I looked abroad. The blacks were free,
But voiceless, voteless, filled with woe
Slaves of their masters seemed to be
As much as twenty years ago.
She said "And what did Uncle Dorr
Get killed in front of Richmond for?"

A rifle club went wheeling by;
I saw the murdered Chisholm's ghost;
I heard the Hamburgh martyrs' cry—
The rebel yell—the vaunting boast;
I saw the wounds of patriot dead;
"What made you go?" my Jennie said.

"My dear," I said—but nothing more,
For, glancing through the Senate walls,
The rebel generals had the floor,
And ruled the nation's council halls!
"Papa," she urged, "Why did you go?"
"My child," I said, "I do not know."

All during the war every effective measure for the suppression of the rebellion was opposed by leading democrats at the North as unconstitutional. Democrats at the South opposed them in a more heroic manner. The one, however, was the ally and complement of the other. Hence I do not wonder that rebels and copperheads have united and striven together in time of peace to rule the nation which they could not together destroy in time of war.

In my own State the supreme court, having a majority of democratic judges at the time, decided the draft and legal-tender laws unconstitutional in the midst of the war. Without men and money the Union must have been destroyed. That decision was reversed by the election of a republican judge.

During the war the senate of Pennsylvania was at one time composed of seventeen republicans and sixteen democrats. General WHITE, now a member of this House, was one of the republicans, and HIESTER CLYMER, also of this House, one of the democrats. General WHITE was taken prisoner by the rebels before he took his seat, and for months those sixteen democrats held the senate in a dead-lock and prevented the organization of the Legislature at a time when its services were greatly needed in defense of the Union. The confederates and copperheads captured the senate of Pennsylvania that time and paralyzed the arm of that great State for a season just as they are now striving together to capture the nation. But those sixteen uncompromising republicans stood unflinchingly by the loyal people of the State, holding the rebel allies in check until the resignation of General WHITE was sent secretly through the rebel lines, the people elected another republican in his place, the Legislature was organized, and the loyal heart of that great Commonwealth again beat in unison with the pulse of the nation!

Again, in the darkest hour of the war, while thousands of republican voters were in the Union Army, the copperheads and peace democrats of Pennsylvania controlled the Legislature of that State and chose Charles R. Buckalew Senator of the United States. For six years the voice of that Commonwealth was paralyzed by his votes

upon all the important war and reconstruction measures of the Union Congress. The Legislature was terrorized by the presence of roughs and repeaters from Philadelphia in the interest of the peace-at-any-price democracy, lest a war democrat or a republican should be elected Senator. Subsequently the republicans favored the right of citizen soldiers to vote while in the Army, and the peace democracy of the State opposed it throughout. The war democrats stood by the Union, and from that day to this the Legislature of that State has never been controlled by the democracy. Thus, at every point the peace democracy, domineered and controlled by the spirit of secession under the lead of the copperheads, gave aid and encouragement to the rebellion by every means within its power.

While Grant was clutching the rebellion by the throat in its final struggle, and Sherman was cutting out its vitals on the march to the sea, this same democracy, led on by its highest and vitalizing hope of doughface supremacy, assembled in Chicago by the great lakes, and there, encouraged by the presence of leaders of the "Sons of Liberty" and the "Knights of the Golden Circle," and confirmed by the counsel of rebel emissaries in Canada who had been conspiring with northern rebels to set fire to northern cities, in the faces of their struggling countrymen of the North and before the civilized world in history, declared that the war for the Union was "a failure!" Thus they sought to justify and to confirm the success of the war for secession.

When the news of the "Chicago surrender" reached Daniel S. Dickinson, the great war democrat of New York, he put and answered the question which it suggested in the first line of a poem which expressed the indignation of every loyal man at the North, whether democrat or republican:

Am I for peace?
Yes! for the peace that speaks out from the cannon's mouth.

There was then an uprising against this new phase and counterpart of the rebellion throughout the whole of the mighty North such as had not been seen since the flag was first fired upon. The people rallied to the standard of Abraham Lincoln, the good, the true, the brave and unfaltering friend of man and of his country, and by his election again declared with Jackson, "The Union must and shall be preserved."

This was the answer of the loyal North to that shameless offer of opposition to further war for the Union. It substantially closed the war. And to-day there would be no doubt of the full, complete, and final security of all the fruits of that war but for a similar antipathy and opposition to them still existing at the North. And this it is that, added to its living cause at the South, still keeps the ship of state—of the new state of freedom, equal rights, and equal opportunity for all men—floundering in a deep and troubled sea.

The great heart and good sense of the North hold no animosity against the South. The most radical republicans among us are the most ardently and wisely conservative in this respect. They demand and would receive no mean submission from the South. They insist only upon full and absolute security for the Union under its new law of freedom. This they know, and all honest men must admit, is wanting. They will adhere to this creed, for they believe it to be founded in the supreme and eternal law of justice and right and sanctioned by Him who suffers no breach of any law to go unpunished either for those who commit or who fail to resist it.

How came about this alliance between the spirit of the late rebellion and its counterpart at the North? Simply by the natural attraction of kinship which I have in some manner defined and exemplified. I speak not now of war democrats who held their allegiance to the Union sacred. In this connection I am seeking only to measure the strength of that spiritual force among us which gives importance to the Calhoun idea. The war democracy is as much as ever against any supremacy of "the controverted right of secession," and any capture of the capital for the "lost cause." In the final struggle between the two spiritual forces I have tried to delineate that element will stand for the new Republic. It will stand there by force of a similar law to that which will unite honest-money democrats and honest-money republicans against all assaults upon the honor and good fame of the Republic. The truth is that the union between the northern and southern democrats upon the basis of the Calhoun idea of State sovereignty never ceased during the war. The cheers which answered back to Chicago from the rebel ranks expressed a hope on the part of the South for reconstruction on the basis of "the Constitution as it was." "The Constitution as it was" meant in their belief "a compact between sovereign and independent States, each having the right to secede from the Union," as Mr. Davis still holds, and as all the southern leaders still teach, "as an inherent attribute of State sovereignty." The Chicago declaration in 1864 for "a cessation of hostilities" contemplated a treaty of peace; and the moment such treaty should be entered upon that moment the idea of State sovereignty would be recognized, and once recognized it would never be surrendered. Failing in that, when the rebels laid down their arms and were permitted to go in peace, the republican or national theory that the Union is indissoluble and perpetual was pretended to be accepted as the next line of battle; and upon this theory old-line democrats, North and South, united at the close of the war, and stand united to-day.

They presented the case to us in this manner: You said no State has the right to secede and made war to coerce secession; you fought to preserve the Union and you succeeded; therefore no State went out of the Union, although several attempted to do so, and each is still intact, all are equal States in the Union, and so they must remain. Upon this theory Andrew Johnson, although he had at first said that "the rebels must take back seats in the work of reconstruction," finally stood impregnably with the democratic party and insisted that all the seceding States were in the Union at the close of the war and entitled to representation in Congress the same as the others. The democratic party of Pennsylvania so declared in State convention. Democratic orators and papers all over the North called the National Congress "The Rump" and disputed its authority to legislate upon the subject of reconstruction.

Congress did legislate, however, and succeeded in preventing the readmission of Senators and Representatives from the South except upon certain conditions prescribed by law after the war closed. Then the cry of coercion and "duress of sovereign States" was again raised. In this connection I will quote the words of the gentleman from Mississippi [Mr. CHALMERS] uttered in this House on the first day of the present month:

You sent grand armies after us. You hemmed us in by land and by sea. You not only threatened to shoot but you shot us to death. With the battle-cry upon your lips of the Constitution as it is and the Union as it was, you rallied the whole North without regard to party in defense of the old flag, and when the battle was won you tore off the veil that covered your hideous deformity; you dissolved the Union that you had saved; you changed the Constitution of our fathers for which you had pretended to fight; you changed State sovereignties into military provinces; you converted the constitutional Union by usurpation into almost a military despotism presided over by a successful military chieftain; you organized returning boards that stole State governments and ended in stealing the Presidency itself.

This would be a strong indictment if it were true. At all events it puts upon record again that gentleman's opinion, and shows quite clearly, I think, how natural and congenial the alliance between the copperheads and rebels was during the war, and illustrates that law of affinity by force of which they have been united ever since.

During the continuance of Andrew Johnson as President the republicans had force enough in both Houses to pass laws over his vetoes, which came thick and fast, and a vital fever possessed the reunited democracy to get possession of the Government. The large majority in the Senate could not be overcome for many years, even if that party should succeed in 1868 in the election of a President and a majority in the House. It was necessary in some way to turn out the Senators who had been chosen by the republicans (mostly colored people) from the South, and Major-General Francis P. Blair invented a short-cut to this end. It was laid out on the theory I have stated that the reconstruction acts were unauthorized by the Constitution, and therefore of no effect. These laws once out of the way, the white people who were entitled to vote under the old constitutions South would have control, and would drive out the reconstruction Senators, and put others in their places who adhered to the theory of State sovereignty.

I quote from the letter of Mr. Blair to Mr. Brodhead under date of June, 1868, as follows:

We cannot undo the radical plan of reconstruction by congressional action: the Senate will continue to bar its repeal. Must we submit to it? * * * If the President elected by the democracy enforces, or permits others to enforce, these reconstruction acts, the radicals, by the access of twenty spurious Senators and fifty Representatives, will control both branches of Congress, and his administration will be as powerless as the present one of Mr. Johnson. There is but one way to restore the Government and the Constitution, and that is for the President-elect to declare these acts null and void, compel the Army to undo its usurpations at the South, disperse the carpet-bag State governments, allow the white people to reorganize their own governments and elect Senators and Representatives. The House of Representatives will contain a majority of democrats from the North, and they will admit the Representatives elected by the white people of the South, and with the co-operation of the President it will not be difficult to compel the Senate to submit once more to the obligations of the Constitution.

Soon after this letter was witten the democratic national convention assembled in New York City, and nominated Mr. Seymour for President and Mr. Blair for Vice-President.

WADE HAMPTON, who was present at that convention, made a speech on his return to Charleston, South Carolina, in which he said that the leaders of the democracy "declared their readiness to give us (the southern wing) everything we could desire, but they begged us to remember that they had a great fight to make at the North." Hence it was necessary to keep the wolf's paws covered. This hiding of the "cloven-foot" policy has been skillfully managed until recently; latterly the wolf has grown restive, and for some time growls were heard from beneath the coverlets, afterward the covering began to show signs of animation, recently a paw was reached out to "compel the Senate to submit," and since the Senate was ravenously seized on the 4th of March last, a spring has been made in the direction of the White House. At last accounts some clamor and complaint have been heard from outside parties who will take charge of the menagerie in 1880, and the claws have been carefully drawn in preparatory to an early covering up for a short nap—long enough to get a good ready for another spring. The project of 1868 did not succeed. No more will that of 1879.

To show the interpretation placed upon the democratic platform of 1868, I quote the following from a speech of Robert Toombs, of Georgia, formerly a United States Senator, who is reported to have once said that the time would come when he would call the roll of his slaves in the shadow of Bunker Hill monument:

Is there any man going to accept terms that degrade him and his children for

ever? What these people call "reconstruction measures" are null and void, and not laws. * * * We will resist to the death this measure of iniquity, this measure that compels you to admit the negro to perpetuity of suffrage with yourselves. If General Grant wants peace let him join the democratic party. I say, by God, that neither depotism, nor tyranny, nor injustice meets with peace in this world or the next. We want no peace in chains.

This is stalwart and to the point, as everything Mr. Toombs says or does is. I understand Mr. Toombs, like Mr. Davis, to be irreconcilable and unwilling to ask to be relieved from the disability imposed by the Constitution for his part in the rebellion.

I also quote the following passage from a speech of Hon. B. H. HILL, now a distinguished Senator from Georgia, which was received by his audience with "wild cheers:"

This shall be forever a Union of equal States or no Union at all. Men of pride, men of character, women—thank God—without a dissenting voice, and even children in their play-grounds, are proclaiming on hill-top and in the valley that those whom God made superior shall never be degraded.

These were the principles, this the spirit and policy of the democratic party three years after the close of the war. The object was to nullify all the measures and tendencies of the time which grew out of the war, looking to the ratification by civil processes of the emancipation of a race, and the obliteration of all claim thenceforth of the right of State sovereignty. True it is that the former of these, emancipation, has been written in the Constitution; but the latter, if, as the greatest men of the democratic party still claim, it ever existed, State sovereignty, has LOT been prohibited therein. The latter, then, still lies in dispute and remains mere matter of construction. I believe the Supreme Court has more than once sustained the constitutionality of reconstruction; but the court cannot make, it can only declare the law, and judicial precedents are not absolutely controlling.

With this "right" still in controversy, and with a great people like the South using every instrumentality to inculcate the principles which underlie it into the mind of coming generations, it will in my judgment, if not soon exterminated, at some future time take form as a national belief and find forcible expression again for organic existence. No man can foresee the differences which are likely to arise among a people scattered as we are over such a vast territory, with such variety of soil, of climate, of national productions, and of intellectual and moral temper and tendency. We are not by any means a homogeneous people. We are fast becoming heterogeneous in many things and in many directions which have lain at the foundation of human strife and wars. Hagel, the celebrated German philosopher, speaking of our political condition and prospects, says:

As to the political condition of North America, the general object of the existence of of this state is not yet fixed and determined, and the necessity for a firm combination does not yet exist; for a real state and a real government arise only after a distinction of classes has arisen, when wealth and property become extreme and when such a condition of things presents itself that a large portion of the people can no longer satisfy its necessities in the way in which it has been accustomed so to do.

But America is hitherto exempt from this pressure, for it has the outlet of colonization constantly and widely open, and multitudes are continually streaming into the plains of the Mississippi. Had the woods of Germany been in existence the French revolution would not have occurred. America, therefore, is the land of the future where, in the ages that lie before us, the burden of the world's history shall reveal itself, perhaps in a contest between North and South America.

To me the southern idea is objective. I look without and behold it from the time when it was "precisely in a minority of one" in its best-defined form in the mind of John C. Calhoun, thenceforth growing in the minds of many till it made its first assault upon the nation by nullification in South Carolina, and on to 1861 when it had drawn to itself a host and united the Confederate States in its last forcible attack upon my country. The northern idea is to me subjective. I look within and realize it in my own inmost being as the soul of the National Union, without the supremacy of which we shall cease at no very distant time to be a united nation.

What now is the spirit and substance of the issue in the pending discussion? Mr. BECK, representing the democratic conference committee of the Senate in the last Congress, presented this issue as follows:

They seemed further to agree, and I agreed with them, that if an extra session must be called, much as it is to be regretted, the very moment it is called the committees of both Houses would be organized and separate bills would be framed and passed as soon as possible asking the President of the United States to agree with the representatives of the States and people.

* * * * * * *

We insist that those matters pertain solely to the States and are part of their absolute right. * * * When these three laws are submitted to the President for his approval, as they will be, and are approved by him * * * the next Congress will in my opinion be ready to pass every appropriation bill. * * * If, however, the President of the United States, in the exercise of the power vested in him, should see fit to veto the bills thus presented to him, which I repeat will simply be to keep soldiers from the polls, to allow proper jurors to serve who will try cases honestly, and allow the States to control their own elections, then I have no doubt those same amendments will be again made part of the appropriation bills, and it will be for the President to determine whether he will block the wheels of government and refuse to accept necessary appropriations rather than allow the representatives of the people to repeal odious laws which they regard as subversive of their rights and privileges. * * * Whether that course is right or wrong, it will be adopted, and I have no doubt adhered to, no matter what happens with the appropriation bills.

Standing upon this platform the democrats in both Houses refused to pass appropriation bills making appropriations for the Army and the legislative, executive, and judiciary departments of the Government. Without these appropriations the Government must stop after the 30th of June next. Bills were offered by republicans in both Houses at the last Congress, providing for these appropriations with no new legislation in them, and the democrats indignantly refused to consider them. Mr. Foster, of Ohio, proposed the one in this House, and said that the republicans would agree to its passage at once in both Houses. The reply came quickly and imperiously from Mr. Southard, who had led the democratic side, "It will not pass." That bill simply provided for a continuance during the next fiscal year of the same appropriations that had been made by the democrats for the current fiscal year. It did not pass, for, as was more than once suggested by democrats, if it were not passed an extra session would be necessary, and at such session they would control the Senate as well as this House and would then "adhere" to the riders they had attached to these bills. Thus the threat was distinctly made to coerce the President in the exercise of his discretion as to his duty when the bills shall be presented to him for his approval or disapproval. The Constitution provides in relation to this subject as follows:

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law.

"If he approve he shall sign it, but if not he shall return it with his objections." To withhold the appropriations till the President shall be compelled to consent to "a redress of grievances," even if any existed, which I deny, would be to force the President to sign a bill which, if he shall not approve, he is expressly required by the Constitution and his oath to "return with his objections." The Constitution says "if he approve he shall sign." This disorganic attempt to destroy the independence of the Executive would require him, in breach of his oath of office, to "sign" a bill which he does not "approve," if upon examination it should be objectionable in his mind. Such coercion of the President would be not only unconstitutional and revolutionary, but would, in my judgment, be a breach of the oath taken by every Senator and Member of Congress who should insist upon it and adhere to such action till the Government should be left without the means of support. The oath we take binds us to "support the Constitution," not to leave it without support. This latter would be abdication; and a faithless, treasonable Congress can no more destroy this Government by abdication than a faithless king could destroy the government of Great Britain by abandonment. When King James deserted his office the throne was declared vacant by the two houses of Parliament and a new sovereign was chosen in his place. Congress is not the Government; it is only the voice of the people in proposing laws for their approval, on second thought, through the President. The President represents the people in a high and important sense.

No doubt many men voted for President Hayes who did not vote for any member of this House. Many place great reliance, for instance, upon his well-known opinions on finance, and they know that he will express their will finally upon financial measures. They had the right to abstain from voting, relying upon him as their representative in the process of legislation. Therefore this Congress may not represent all the people who are represented as to their legislative will. This Congress does not alone represent any of the people as to that will. The President jointly and necessarily represents all *sub modo*, and many it may be absolutely, as their sole reliance.

There is in this country no "omnipotent power of parliament" in either branch of the Government. Ours is a government of prescribed, defined, and limited powers, rights, and duties vested in each department severally, and the independence of each branch within its defined sphere of action or non-action is absolute and unquestionable. Neither may say to another: Do this thing. When that shall be said by either to another and be obeyed, organic government that moment ceases.

This, Mr. Chairman, was and is the issue presented to us. The false pretense that the republican party is opposed to these measures as revolutionary because they are tacked to appropriation bills simply is too shallow and absurd to deceive anybody. That was understood in Congress at the first, and the issue cannot now be narrowed down before the people. It was and is well understood by us and by them that in this instance these riders were attached to the appropriation bills for the very purpose of forcing them into the law, whether the President shall approve them or not. If our democratic friends do not mean to insist upon and "adhere" to them for this purpose, why have they not accepted, why do they not accept, the republican proposition, often made, to consider each separately and let all depend upon their merits? If this is not the object, why all the travail and worry of caucus after caucus not only as to their substance, but as to the method of proceeding? If this is not the object, we could pass all these bills in a day by common consent, and they could be signed or disapproved and finally disposed of within a week, and we be out of this city and away to our homes, where the voice of the people unmistakably says we belong?

Why this extra session, with all its expense, its heated discussion, this worry and pestering of business, and, what is worse, the inevitable growth of sectional feeling which must flow from it?

Let one who speaks with authority, if not with highly becoming grace and modesty, answer these questions once more:

Mr. BLACKBURN. I am willing, and those with whom I stand are willing, to ac

cept this issue, and we go further, we tender it. We are the ones to make the issue and we are ready for you to accept it. Planting ourselves upon this broad ground, we welcome controversy. We seek no quarrel with you, but for the first time in eighteen years past the democracy are back in power in both branches of this Legislature, and she proposes to signalize her return to power; she proposes to celebrate her recovery of her long-lost heritage by tearing off these degrading badges of servitude and destroying the machinery of a corrupt and partisan legislation.

We do not intend to stop until we have stricken the last vestige of your war measures from the statute-book, which like these were born of the passions incident to civil strife and looked to the abridgment of the liberty of the citizen.

* * * * * * *

I do not mean to issue a threat. Unlike the gentleman from Ohio, I disclaim any authority to threaten. But I do mean to say that it is my deliberate conviction that there is not to be found in this majority a single man who will ever consent to abandon one jot or tittle of the faith that is in him. He cannot surrender if he would. I beg you to believe he will not be coerced by threats nor intimidated by parade of power. He must stand upon his conviction and there we will all stand. He who dallies is a dastard, and he who doubts is damned. [Great applause on the democratic side.]

This is no uncertain voice. I think the people understand it and that they will answer it as they answered that more heroic, if not more honorable, assault in which that gentleman was engaged and which made all these "war measures" necessary. I think that every indication of the spirit and purpose of the democracy, domineered and controlled as it now is by the same arrogant assumption of southern superiority as of old, warns that people who fought the battles of the Union that it is unwise and unsafe alike for all sections and all the people to permit a single one of those war measures to be repealed in the manner and temper now proposed and exhibited before us. For my part I should oppose this assault thus made in every instance, without regard to the substance of the laws, which a secret democratic conclave, made up of organic committees of each House, has said we shall repeal. It is wise and patriotic to meet at the threshold every attempted usurpation of legislative authority coming from such a source for the avowed purpose of attacking the independence of members of Congress not admitted to such conference, and intended, as is this, to destroy the independence of the Executive.

Senator THURMAN said in the last Congress that this warfare is to continue till this House, which has the sole power of originating money bills, shall be supreme for the "redress of grievances," and he prophesied that it will not cease till he and his colaborers of the Senate shall be in their graves. We who stand for organic government as founded by our fathers accept the gage of battle and will abide its issue. We do this not to destroy but to defend and preserve the Constitution of our country as we understand it. To do less in this emergency would be to deserve and receive the contempt and condemnation of the loyal and liberty-loving people of our whole country.

Sir, what are some of the "war measures" which have already been proposed to be "stricken from the statute-book" by this domineering southern aristocracy? The Army bill recently passed by this House contained a clause which prohibits promotions of Union officers now in the Army in certain cases. The operation of this amendment will be to reduce the official muster-roll of the Army, and looks to vacancies to be filled, if thought proper, hereafter. The gentleman from Virginia [Mr. TUCKER] has invented a way to fill them, and he proposed an amendment to that bill to strike this "war measure from the statute-book," namely:

SEC. 1218. No person who has served in any capacity in the military, naval, or civil service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion, shall be appointed to any position in the Army of the United States.

Union officers must not be promoted: Confederate soldiers may be appointed.

The chairman of the Committee on Pensions in the Forty-fifth Congress reported a bill on the 13th of February, 1878, to repeal section 4716 of the Revised Statutes, which is as follows:

No money on account of pension shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States.

This law was passed to prevent payment of pensions to rebels in arms. The same bill also contained a new section, as follows:

SEC. 7. That the Secretary of the Interior be, and is hereby, authorized and required to restore to the pension-roll the names of all invalid pensioners now living who were stricken therefrom on account of disloyalty, and pay them pensions from the 25th day of December, 1868, at the rate which they would have been entitled to had they not have been dropped from the pension-roll.

Had these changes been made the late rebels, including Jeff Davis, would be again entitled to pensions for services in the Mexican war.

In the Senate at the close of last session a vote was taken upon the question of pensioning Jeff Davis and every democratic Senator who voted voted to pension him, every republican against it. The Senate was then republican, now it is democratic. What sane man on either side could have believed this possible fifteen years ago? I did not one year ago, yet so it is. For my part I think it will be time for us to pension rebels who fought against the Government after they shall have proven the strength of their patriotism by fighting for it if, unhappily, any of us shall be called upon to do so.

In the last Congress an attempt was made to repeal an old statute of the United States which provides for the trial of United States officers charged with offenses alleged to be committed by them in the discharge of their official duty, in the courts of the United States. That proposition was carried through this House by democratic votes. Thus an attempt was made to remit the officers of this Government who are employed in enforcing its laws to trial in the State courts. The purpose of this was to leave such officers without the protection of the Government they are required to serve, and to put them at the mercy of packed and prejudiced juries at the South. Again, State sovereignty was invoked by the democracy to practically nullify the laws of the United States. This was near the adjournment one year ago, and it was not many weeks before a case arose in South Carolina where revenue officers were resisted in the discharge of their duties and compelled to use arms in their defense. They were arrested and committed to prison under State laws, and held prisoners for some time in defiance of the laws of the United States. At first the State court refused to obey a writ of *habeas corpus* issued from the United States court, when the Attorney-General of the United States intervened, and finally the writ was obeyed under protest.

A section relating to the use of the Army as a *posse comitatus* was forced into a general appropriation bill by the democratic House in the Forty-fifth Congress, and, although it was strenuously opposed by the republicans, it became a law on the 18th of June, 1878, having been presented to the President only two days before final adjournment. That provision is as follows:

SEC. 15. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States as a *posse comitatus*, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section, and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $10,000, or imprisonment not exceeding two years, or by both such fine and imprisonment.

It is notorious that neither the Constitution nor any act of Congress upon the statute-book prior to 1861 "expressly" authorized the use of the Army to suppress the rebellion. James Buchanan and Attorney-General Black held that no power to use the Army for that purpose existed at that time. Had this penal statute existed in 1861 Abraham Lincoln would have been held by strict constructionists liable to impeachment for using the Army against the southern rebellion. The provision, as passed by the democratic House, did not contain the word "Constitution;" that was inserted by the Senate, then republican.

It was not my purpose to discuss the constitutionality of the laws proposed to be amended, nor to any considerable extent the merits of those amendments. Others have done this at great length and with consummate ability. I am content to stand upon the argument and reasons given by others against this assault upon the freedom and purity of the ballot-box. In the face of frauds perpetrated by democrats in the past in northern cities, and the force and fraud used by their allies at the South to nullify the right of colored republicans to vote, I shall not consent to the removal of any safeguards thrown around the ballot-box intended to prevent such frauds or force anywhere.

I favor no forcible or other interference with the right to vote, but advocate the employment of all the means and the exertion of all the power necessary to secure the free exercise of that right. It will be time to withdraw these when democratic frauds and confederate bulldozing shall cease. The necessity for national regulations of congressional elections is apparent from current history to all honest men. I believe that if there be one thing which the people of the North now mean to insist upon by all means within their power, it is that the freedmen of the South especially, and all citizens, shall have an open way to the polls and an equal, unintimidated voice in the ballot-box. This can injure no man; it will simply do justice to all, and secure the highest right of the citizen to many now denied it.

Legislative, etc., appropriation bill.

SPEECH OF HON. W A. FIELD,

OF MASSACHUSETTS,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. FIELD. Mr. Chairman, the gentleman from Texas, [Mr. REAGAN,] in a speech made some days ago on the Army bill, said that "the true construction of section 4, article 1, of the Constitution manifestly is that in the event of the people of a State failing to make provisions on these subjects, Congress may, in the exercise of its discretion, make regulations on the subject," and that when the States make regulations Congress may alter them as to "the times, places, and manner of holding elections," that "the history of this provision shows that the object of inserting it in the Constitution was to enable the Federal Government to secure representation in Congress in case the States should neglect the performance of their duty in this respect."

The gentleman from Louisiana, [Mr. ELAM,] after reading from

Elliott's Debates, said that "the absolute control of this matter given to the States was limited by this qualifying clause only with the purpose of enabling the Congress, in the event of failure on the part of any of the States to provide for congressional elections in the manner contemplated by the Constitution, to interpose, and, with a view of preventing its own dissolution, provide for the holding of such elections;" "that it was a power which could be exercised only upon the failure of the States to act, and was conferred solely with the view of enabling the General Government to protect itself from dissolution." Many other gentlemen on the Army bill and on the legislative bill have taken the same position.

Gentlemen will agree with me, I think, that it is a very dangerous principle of construction to put substantial limitations upon the powers granted to Congress by the Constitution, on the ground that it was understood by one or more persons at the time the Constitution was adopted that these powers were not to be used except in certain cases not specified in the Constitution itself. But I think it is demonstrable that it was not understood by the people of the United States, or any of them, that Congress should exercise the power granted by this section only when the States refused, neglected, or were unable to prescribe the times, places, and manner of holding elections for members of Congress.

It appears that in the Federal convention the committee of five, in reporting a draught of the Constitution, reported the following:

ARTICLE VI.

SECTION 1. The times, places, and the manner of holding the elections of the members of each House shall be prescribed by the Legislature of each State, but their provisions concerning them may at any time be altered by the Legislature of the United States.

Mr. Pinkney and Mr. Rutledge moved in convention to strike out the last clause conferring the power of alteration on the Legislature of the United States. This was debated and the motion was lost. The clause was then amended so as to read:

But regulations in each of the foregoing cases may at any time be made or altered by the Legislature of the United States.

This change was made because it was said that if the power was confined to altering the regulations of the States the provision could be defeated by the States making no regulations at all. In this form it was agreed to without dissent and sent to the Committee of Revision. The Committee of Revision in reporting their draught reported the section as it now stands with the exception of the last clause, as to the place of choosing Senators; this exception was added in convention, and the section in its present form was adopted and submitted to the States for ratification and ratified.

The gentleman from Connecticut [Mr. HAWLEY] has referred the House to the three papers in the Federalist which discuss this section. Those papers, as has been said, defend the section on the plain proposition that every government ought to contain in itself the means of its own preservation; and the reasons why it should be left to the discretion of Congress to determine when and to what extent this power should be exercised by it are fully considered in those papers. This section met with very earnest opposition in the conventions of some of the States, particularly the States of Massachusetts, New Hampshire, Rhode Island, New York, Virginia, and South Carolina. The discussion in the conventions of those States turned in substance upon the question whether this power given to Congress should be unlimited, or should be exercised only when a State neglected or refused to make regulations on the subject or made regulations subversive of the rights of the people. In the convention of all those States the power granted was admitted to be unlimited, and it was defended and attacked on that ground. In adopting the Constitution certain of the States proposed that amendments should be made. One of the recommendations of Massachusetts was as follows:

That the Constitution be amended so that Congress do not exercise the powers vested in them by the fourth section of the first article but in cases when a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress agreeably to the Constitution.

The recommendations from the States were presented to the first Congress of the United States and referred to a committee. As the Senate then sat with closed doors there is no report of its proceedings; but the Annals of Congress show briefly the proceedings in this House. Upon motion of Mr. Madison certain specific amendments, together with the amendments proposed by the States, were referred to a committee consisting of a member from each State. I do not find the report in the Annals; but it is manifest from the proceedings that the committee did not recommend any modification of the section under debate, and accordingly Mr. Burke in the House moved to add to the articles of amendment reported the following:

Congress shall not alter, modify, or interfere in the times, places, or manner of holding election of Senators or Representatives except when any State shall refuse or neglect or be unable by invasion or rebellion to make such election.

This motion was debated and the debate is briefly reported. I shall not weary this committee with it except by quoting a single sentence from Mr. Madison:

Mr. Madison was willing to make every amendment that was required by the States which did not tend to destroy the principles and the efficacy of the Constitution. He conceived that the proposed amendment would have that tendency, and was therefore opposed to it.

The motion of Mr. Burke was lost—23 yeas, 28 nays.

Congress afterward at this session proposed twelve amendments to the States for ratification, of which ten were ratified by the States and are now the first ten amendments to the Constitution. No one of the amendments recommended by Congress contained any modification of this section.

It appears, then, that the question whether the power of Congress in making regulations prescribing the times, places, and manner of holding elections should be limited in the manner suggested was distinctly discussed before the people of the country and in the conventions of the States; that a minority of the State conventions thought the Constitution should be amended by providing that Congress should not exercise the power except the States refused or neglected or were unable to make regulations; that this proposition of the States was submitted to the First Congress, and also submitted as a distinct proposition by a member, was discussed and defeated, and was not included in the amendments proposed to the States. It cannot be said, then, that this power granted to Congress was understood by anybody to be subject to any such limitation. What, then, is the construction of the section? Section 4, article 1, plainly means what it says:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

It is to be noticed that the only power granted to the States to prescribe rules for holding elections for Senators and Representatives in Congress is in this section, and the power granted to Congress is as ample as the power conferred on the States. It might be that if the section had been omitted the States would have had the right to elect Representatives in Congress in their own way, subject to the single limitation that the qualification of electors should be those of the electors of the most numerous branch of the State Legislature. The Constitution has, however, undertaken expressly to confer the power upon the States. The construction of the section plainly is, that Congress may at any time, by law, make regulations prescribing the times, places, and manner of holding elections for Senators and Represenatives, or may alter any regulations which the States may make; and the regulations made by Congress are, by the Constitution, the supreme law of the land. If the regulations made by Congress cover the whole ground, then all State laws on the subject become void, and such elections would be held exclusively under the law of the United States. But Congress need not go so far, and can alter any part of the regulations prescribed by the States either by striking out of, inserting in, or adding to them such regulations as it may make, and such regulations are the supreme law in each State and repeal the State regulations so far as they change them, and the remainder of the State regulations stand. The language is, "the manner of holding elections;" and in a constitution which confers power by general words this phrase must be held to include the whole process of election, the registration of voters, the proceedings at the polls, the canvassing of the votes, the declaration of the result, and the issuing of the certificate of election. When all these have been done the election has been held, and not till then.

That this must be the construction appears from the contention that this power should be exercised only when a State neglects, refuses, or is unable to make any regulations on the subject. That this was one of the contingencies contemplated is certain. If the State make no regulations and the United States then make them, such regulations to be effectual must cover the whole ground of registration, casting of votes, canvassing of votes, and declaration of the result; otherwise it could not be determined whether any person has been elected, no election would have been held, and the power of Congress would be nugatory.

That this is the true construction appears also from the legislation of the United States. This has been referred to by the gentleman from Connecticut. By the apportionment act of June 25, 1842, Congress provided that Representatives shall be elected by districts composed of contiguous territory, no one district electing more than one Representative. Until this time some States elected Representatives on a general ticket; others by districts, some of the districts electing more than one Representative.

The gentleman from Kentucky [Mr. CARLISLE] has referred to a report made to this House in 1844 by Mr. Douglas from the Committee of Elections. A majority of that committee, in a case where four States had not changed their laws which provided for election on a general ticket, reached the conclusion that the members so elected were entitled to their seats on the ground that the law of Congress was defective; that it did not go far enough; that it did not provide in itself for districting the States, but merely commanded State governments to district them. It was conceded by the majority that Congress had full power over the subject, and that Congress might prescribe the manner or leave it to the States; but it was argued that the legislation of Congress must be complete, to the extent of executing itself without the intervention of the State Legislatures, and that this act of 1842 merely commanded the State Legislatures to district the States, and was therefore inoperative. The minority differed from these views, and held that the statute was operative in itself and was the supreme law. The report of the majority was accepted by the House. The law was, however, not repealed, so far as I can find. By the terms of the law it was confined to the appor-

tionment made under the law of 1842. This provision for election by districts was not contained in the apportionment law of 1850, but was again enacted in 1862 and again in 1872. That the right to district a State is included in the right to prescribe the manner of holding elections, is not at all necessary to my argument, although I think the right has now been acquiesced in by all the States.

That the power given to Congress has been thought to cover the whole ground appears from the legislation in regard to the election of Senators. Congress has provided that the Legislature which is chosen next preceding the expiration of the time for which any Senator was elected shall proceed to elect a Senator; that the election shall be by *viva voce* vote; shall be on the second Tuesday after the meeting and organization of the Legislature; that one person for Senator shall be voted for in each house the first day; that the person elected must receive a majority in each house, and if either house fail of such majority by twelve o'clock noon of the next day, the houses shall meet in joint assembly and a vote be taken; that the person elected must receive a majority of all the votes; that these proceedings shall continue each day during the session of the Legislature, and one vote at least be taken each day until a Senator shall be elected; that the proceedings shall be entered on the journal of each house; and that a certificate of election under the seal of the State shall be made by the executive of the State, countersigned by the secretary of state, and sent to the President of the Senate. These regulations, so far as I know, have been acquiesced in by all the States.

If, then, it be true that the regulations which Congress may make in its discretion may cover the whole manner of holding elections from the registration of voters to the declaration of the result and the issuing of the certificate, and that such regulations when made are the supreme law, I think it is clear that Congress has a right to prevent any violation of these regulations and to punish any person who violates them; to appoint its own officers to carry them into effect, and to prevent any interference with these officers in the performance of their duties. The gentleman from New Jersey [Mr. ROBESON] has ably presented this, but a few illustrations may not be out of place.

The Constitution expressly gives to Congress the power to make all laws which shall be necessary and proper for carrying into execution the powers granted to it. Nine-tenths of the criminal legislation of the United States rest upon the power to make laws to prevent infractions and to punish violations of the laws enacted to carry into effect the express powers granted to Congress in the Constitution. It is well known that there are no common-law crimes of the United States; that all offenses are statutory; that the only express powers in the Constitution conferred on Congress relating to crimes are to provide for the punishment of counterfeiting the securities and current coin of the United States, and to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. All other offenses and crimes rest on the implied powers of Congress, or on the power to make the necessary and proper laws to carry the express powers of Congress into effect. Congress has power to lay and collect taxes, duties, imposts, and excises; and as necessary to this power is found the power of Congress to enact all the punishments and penalties found in the revenue laws.

Congress by regulation prescribes in what manner goods shall be imported and entered; authorizes its officers to detect and to prevent the importation of goods in any other manner; punishes all persons who import goods in any other manner; provides for a seizure and forfeiture of the goods; punishes all persons who rescue or attempt to rescue any property taken by any officer or other person under the authority of any revenue law of the United States, and all persons who forcibly assault or interfere with any officer of the customs or his deputy or any person assisting him in the execution of his duties; it punishes any person who falsely represents himself to be a revenue officer; it punishes any person who knowingly effects or aids in effecting any entry of goods by means of false invoices or upon a false classification, and in many other ways punishes all persons who fraudulently evade the regulations established by law, and establishes armed revenue-cutters to enforce these regulations; all as incidental to the power given to Congress to lay and collect taxes, duties, imposts, and excises. The numerous penal provisions of the internal-revenue law rest on this clause of the Constitution.

Congress has power to regulate commerce, and from this power of regulation is derived the power to establish all the offenses made punishable by Congress for violation of the regulations it makes, and all the laws in force empowering officers to detect and prevent any violation of them.

Congress has the power to establish post-offices and post-roads, and as incidental to this power it punishes the forging of postal money orders, the counterfeiting of stamps, the injuring of mail matter, the embezzlement of letters, the fraudulent opening of valuable letters, the receiving of articles stolen from the mail, the robbery of the mail, the attempt to rob the mail, the desertion of the mail, the deposit of non-mailable matter for mailing, the knowingly receiving it from the mails, and the placing in any post-office any letter devised or intended to devise any scheme or artifice to defraud, and many other crimes; all as incidental to the power to establish post-offices and post-roads.

And on the same ground Congress, having the power to make regulations prescribing the manner of holding elections for Representatives in Congress, can, in its discretion, make laws that shall prevent or punish any violation of the regulations; may prohibit voting except in accordance with the regulations; may punish any interference with its officers appointed to hold the elections and any fraud upon the elections. But it is said that all this may be true in reference to protecting the officers empowered to hold elections, but it is not true in reference to fraudulent voting, because the qualifications of the voters are determined by the States. It is not contended, as I understand, that the United States cannot make regulations to prevent and punish the false or fraudulent stuffing of ballot-boxes, the false or fraudulent counting of votes, or the false or fraudulent issuing of certificates.

But the right to prevent any person not entitled to vote for Representative in Congress from voting is as clearly within the power of making regulations prescribing the manner of holding elections as the right to prevent smuggling or the deposit of non-mailable matter in the mails. It is of the very essence of such regulations that all persons entitled to vote shall be permitted to vote, and that such votes shall be counted; and that all persons not entitled to vote shall not be permitted to vote, and that their votes shall not be counted. All this is independent of the source of the right to vote. No matter whence the right is derived, any effective regulation of the manner of exercising it would involve the exclusion of all persons not entitled to exercise it.

But this power to prevent fraudulent voting and to punish the fraudulent voter may be put upon another ground, namely, that the right to vote for Representative in Congress is derived from the Constitution of the United States. The Constitution provides that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

It is said that therefore the right to vote for a member of Congress is wholly derived from the State, and is not a right which can be regulated or protected by a law of the United States. This question is independent of any question of fraud in the procuring or using of naturalization papers, as crimes of this class can be made punishable under another and distinct clause of the Constitution. The right to punish any person who knowingly uses a fraudulent certificate of citizenship for any purpose, whether as evidence of a right to vote or in any other respect, might well be placed under the power of Congress to establish a uniform rule of naturalization. The question I am arguing is the right to exclude persons from voting in elections for members of Congress who have no right to vote under the regulations in force in regard to voting, without regard to whether the pretense of the right to vote rests upon any other law of the United States or not. If the law of the United States prescribed that all electors in the State entitled to vote for a representative in the most numerous branch of the State Legislature should register, and that no person should vote whose name was not on the registry, could the supervisors of election refuse such a vote? Could they be protected by law in refusing it, and could such a voter be punished? Or if, in the absence of any such regulations, a person, knowing he was not entitled to vote for representative to the most numerous branch of the State Legislature, voted for a member of Congress, could he be punished by any law which Congress might make?

From what source does the elector derive his right to vote for Representative in Congress? Suppose a State by law prescribes the qualifications requisite for electors of the most numerous branch of the State Legislature, and by law also prescribes different qualifications requisite for electors of Representatives in Congress. The last law would be clearly void as being contrary to the Constitution of the United States.

Suppose the class covered by this law of the State be less numerous than the first class, and the State law prohibits, under penalty, any person from voting for a Representative in Congress not included in the law of the State on that subject; suppose an elector, duly qualified under the law of the State to vote for a representative to the most numerous branch of the State Legislature, and not included but prohibited by the law of the State from voting for Representative in Congress, offers his vote for a Representative in Congress, shall it be received and counted? Clearly it must be. From what source, then, is this right derived? Not in terms from the State, because the State forbids it; not from the State at all. The right is derived wholly from the Constitution of the United States.

The State for another purpose, namely, for the purpose of determining who shall be electors of its own officers, enacts a law. The Constitution of the United States makes those persons electors of a Representative in Congress, not by describing their qualifications, but by reference to them as described in the laws of the State prescribing their qualification for another purpose. The class may be changed by the Legislature of the State for its own elections, and, when changed, the Constitution of the United States operates directly upon the class, and confers upon it the additional right of voting for Representative in Congress.

This method of conferring power by a reference to the laws of the States is not anomalous. By the Constitution the judicial power of the United States is vested in one Supreme Court and in such inferior courts as Congress may from time to time establish. The jurisdiction of the inferior courts and their powers within the limits of the Constitution are created by Congress; and Congress has provided that the laws of the several States, with certain exceptions, shall be

regarded as rules of decision in trials at common law in the courts of the United States; that the practice, pleadings, forms, and modes of proceeding in civil causes in the circuit and district courts shall conform as near as may be to the practice, pleadings, forms, and modes of proceeding, existing at the time in like causes in the courts of record in the State; that in all other respects than those specified by the laws of Congress the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at common law, in equity, and admiralty; and that jurors to serve in the courts of the United States in each State respectively shall have the same qualifications, subject to certain express provisions in the laws of Congress, and be entitled to the same exemptions as jurors of the highest court of law in such State may have at the time they are summoned.

Now, no State can confer any power or put any limitation upon a court of the United States; and the authority of these provisions rests wholly on the Constitution and laws of the United States, and the reference to the laws of the State is solely for the purpose of defining from time to time the powers, rights, and restrictions imposed by the Congress of the United States. The right to vote for Representative in Congress, derived as it is from the Constitution of the United States, can be protected by Congress and encroachments upon it punished.

In a general sense, one State is not interested in the manner in which the elections of another State for State or municipal officers are held. Such officers execute no laws which are necessarily binding upon the citizens of other States. Each State is interested in the election of Representatives in Congress in another State. I do not suppose that we have forgotten that we represent in Congress not only the district from which we are elected, but the whole United States; that the laws we pass affect the welfare of the whole people; that what those laws may be may be determined by the election of Representatives in Congress in some one State, and that the election of a President of the United States may be determined by the election of a single Representative in Congress.

Of what use is the power granted to Congress to make regulations prescribing the manner of holding elections if it has not the power to exclude from those elections those who have no right to vote? The right, of course, to keep order at any election of members of Congress is, even in the most technical sense, within the right to make regulations prescribing the manner of holding elections.

But it is said that even if Congress have all the power contended for, there is no reason why it should exercise it. The bill, however, does not quite admit this, for it provides for the appointment of supervisors. It does not make any provision for protecting them in the performance of their duties or of punishing persons who interfere with them in the performance of these duties, nor gives them any power in any manner to enforce the laws of the United States. They can be excluded from the polls altogether with impunity. In any case where there is any intention of having a dishonest election, in any case in which supervisors are really needed, they are absolutely powerless.

It is contended that they are not needed at all, and that no legislation by Congress is required; that this Government went on for a long time well enough without any such officers and without any regulations by Congress on the subject of national elections, and will continue to go on well enough if nothing is done. But times change. The vices of one generation are not the vices of the next; the dangers to government in one generation are not those of the next. The United States of to-day are not the United States of 1789. In the whole history of the perils of this Government during the first one or two generations, I do not remember that there was any complaint that elections were not honest and free. The violence and fraud which prevailed then did not in a very noticeable degree take the form of force or fraud in elections. The first instance that attracted the notice of the whole country, so far as I know, was the election in the parish of Plaquemines, in the State of Louisiana, in the year 1844; and the next was the conduct at elections in the large cities; in the city of Baltimore during the times of know-nothing politics; in the city of New York, in which the frauds seemed to have culminated in 1868, and in the other large cities of the country.

As cities grow they attract large numbers of disorderly, unprincipled, and lawless persons. The means adequate in the country or in small towns to prevent and punish crime are not adequate to control the population of large cities. The States have recognized this by many enactments, even in the matter of elections, providing with more or less efficiency for the security of the polls and the protection of the voter; and every man who is at all familiar with elections in large cities knows that the most careful and stringent provisions are absolutely required.

But this is not all. In the States of the South which were slave States, in which the inhabitants seceded, rebelled, and were conquered, many changes have taken place, the most marked of which is the emancipation of the slaves. These events have excited very strong passions and left very deep wounds. Many of the emancipated slaves are entitled by law to vote for Representatives in Congress. In some of the States they have for a time controlled the government of the State. It is not in human nature that this condition of affairs should not have excited very strong prejudices and aroused very deep-seated resentments in reference to the exercise of political rights by men who but recently were held as slaves. No man would expect that there could exist in the Southern States the same degree of freedom in elections for all persons now entitled to vote that existed before the war. No man could expect that there was no more need for the protection of national elections in those States now than then. The facts are notorious. The evidence of the most outrageous force and fraud in those States is in our libraries; and this state of things will in a measure continue until the people of that part of the country have become accustomed to and have acquiesced in the changed condition of their society.

The national elections are the most exciting of any, and the national offices the most eagerly sought. The growth of the country has in some respects inflamed the lust for office. The patronage of the President of the United States has become so enormous as to tempt dishonest men everywhere to cheat at elections if they can profit by it; and the election of President, as has been said, may depend upon the election of a single Representative in Congress.

Whatever may have been true of the country for the first or second generation after it was established in regard to the safeguards necessary for elections is not true now. One of the greatest existing dangers to republican government in the United States to-day is the manner in which our elections for national officers are held. We all know this perfectly well, and it is as useless to say that this danger did not exist fifty years ago as to contend that the liberties of the people of the United States are in as great danger of being subverted by a standing army as were the liberties of the people of England by the standing armies of James I and of the Stuarts.

I have said that the States have by their laws recognized the need of more stringent provisions regarding elections, particularly in cities, than those which existed early in our history. The recent Legislature of Massachusetts illustrates this. In 1863 that State adopted the most careful provisions for the preservation in cities of the ballots and check lists; and on a request of citizens for a re-examination and a recount by the board of aldermen the counts and returns of the ward officers, elected as they were by the voters in each ward, were found, when examined by committees of legislative bodies, to be so inaccurate as to require such a law in cities. A special board of registrars has been established for the city of Boston, who are appointed by the mayor and aldermen and are armed with power to ascertain facts and correct the registry, and for that purpose to summon persons before them and require them to answer. The wards in the city of Boston have been divided into precincts, and the precinct officers are, two elected by the voters of the precinct and two appointed by the mayor and aldermen, and the two appointed must be from different political parties. The powers of election officers have been exactly defined, and they have been protected by law in the discharge of their duties, and willful violations of the laws relating to elections have been made punishable. Many of these provisions of the election laws are confined to cities because they were found necessary only in cities; and there are special laws for the city of Boston, because in that large city of the Commonwealth the frauds were most frequent and alarming, and most difficult to prevent or to detect and punish.

It is in this city of Boston that the laws of the United States relating to elections of Representatives in Congress have been put in force. Supervisors appointed by the judge of the circuit court of the United States have attended at each national election since 1872. The chief supervisor from the beginning has been Mr. Henry L. Hallett, a son of the late Benjamin F. Hallett, who must be remembered here as a very distinguished member of the democratic party. The son, if I may be permitted to express any opinion upon his politics, is a democrat with independent tendencies, or an independent in politics with democratic tendencies. Whether I am right or wrong in this, he is recognized by all parties as a just and honorable man who has had large experience in the administration of the criminal laws of the United States. If there have been any complaints of bad conduct on the part of the chief supervisor, or of the supervisors, or of the marshal or his deputies, at elections, I have not heard of them. Until the election of 1878 the supervisors appointed had been supervisors of election only and not supervisors of registration. In 1878, for the first time, the applications were that the registration as well as the election should be guarded and scrutinized by supervisors under the laws of the United States.

I speak from information on this whole subject, but I believe my information to be accurate. This request was made by the democrats. Ten democrats from each of the forty-five precincts which compose the third congressional district, early in September, 1878, filed with the clerk of the circuit court their request for supervisors of registration as well as of election. This was before any request whatever had been made by the republicans. There was no circuit judge, Judge Shepley having deceased, and the clerk transmitted copies of some of these requests to Hon. Nathan Clifford, associate justice of the Supreme Court, assigned to the first circuit, and represented to him that these requests had been filed, that there was no circuit judge, and called his attention to section 2014 of the Revised Statutes of the United States; and Mr. Justice Clifford, on the 13th day of September, 1878, being himself unable to act, designated Hon. John Lowell, then district judge for Massachusetts, to act in the premises, and under this designation the appointments of supervisors were made. Subsequently, on the 3d day of October, two republicans asked for the

appointment of supervisors of registration and of election for the whole city. This statement of facts shows that the appointment of United States supervisors for guarding and scrutinizing the registration as well as the election in the city of Boston was desired by the democrats as well as by the republicans, and that the democrats led the way in requesting a supervision of registration. The event proved that there was need of it in spite of the stringent provisions of the State laws. As I am informed above a dozen arrests were made for refusing to answer, but on being brought before the commissioner most of them consented to answer, and were discharged. None were indicted. The United States supervisors found, after the final revision of the registry by the registrars, above one hundred and fifty persons in the whole city registered who were not entitled to register. Some of them, from twenty to thirty, were arrested, but on a hearing before the commissioner it appeared that the register was made up in such a manner that any man's name might get on it without his personal request, and the registrars had not distinguished between the names they had put on from their own investigation and the names put on by the request of the person himself. These persons were accordingly all discharged.

After election eleven persons were arrested for illegal voting and were indicted; of these, when I last heard, six had been tried and convicted and none acquitted. There has never been any conflict between the State and the United States officers. By the laws of Massachusetts any person whose name is on the registry, if challenged, can vote by writing his name and residence across the ballot or envelope containing the ballot for identification. No arrest was made without a warrant, and in every case of arrest on the day of election the person arrested was permitted to vote if his name was on the registry.

I have entered thus into detail that it may appear how satisfactory to all parties in Boston the law of the United States relating to elections is, where, too, their State election laws are the most careful and exact of any State laws known to me. In States where the election laws are less carefully drawn and less stringently enforced, the necessity of the United States law would be even more urgent. The existing laws of the United States do not alter the laws of the State. The elections are held strictly in accordance with State laws. The regulations of the United States are in addition to those made by the States. The laws of the United States are not called into operation except on request of the resident citizens; and when called into operation the officers of the United States do not supersede the officers of the State, but they scrutinize and verify what is done by the State officers under the State laws. The laws of the United States also punish frauds upon the election and all forcible interference with officers of the United States in the performance of their duties. If the United States are to do anything at all in preserving the purity of elections, it is difficult to see how much less could be effectual.

Now, Mr. Chairman, speaking for myself only, the regulations now existing on our statute-book in reference to national elections are not in every detail precisely such as I desire; and I should be willing at a proper time to sit down with gentlemen and consider any bill that might be introduced on that subject. Such a bill would certainly provide for enforcing the regulations which Congress might see fit to make for preventing and punishing violations of law, and would contain provisions preventing and punishing fraudulent voting.

Such a bill cannot be properly considered as a rider to an appropriation bill, and ought not to be considered at all under a sort of duress. I shall not enter into the details of such a bill now. It will hardly be pretended that if any such regulations are needed, the provisions of the pending bill are adequate or are any effectual regulations at all.

A good deal has been said here against the exercise by the Government of the United States of its powers, as if it were a government hostile to the liberties of the people, and different from the governments of the States which are called friendly to the liberties of the people. The Government of the United States has the same foundation as the government of the States. It was established by the people of the States acting through their State governments and is a government of the people and by them. As a matter of probability there is far less danger that a majority of the whole people of the United States, or a majority of the people in a majority of the States, should combine or conspire against the liberties of the whole people or a minority of them, than that a majority of the people in one State should combine or conspire to oppress the minority of the people of that State. In a small State a few powerful families might control it; a majority might continue indefinitely their power. Many of the States have had occasion to avail themselves of the guarantee by the Constitution of a republican form of government, and have called upon the United States to protect them against invasion and against domestic violence. The history of the country discloses no tendency of the Government of the United States toward oppression. Indeed the tendency has always been toward liberty. The greatest act in our history in favor of liberty has been the act of the United States. It, indeed, happens that the Government of the United States is sometimes held by one political party and the government of the State by another; but this in the long run, though it may create at the time temporary conflicts, is favorable to well-ordered liberty. It prevents the accumulation of power in the hands of any party.

Underlying many of the objections that are made to the exercise of its powers by the Government of the United States is a feeling of distrust of, or of hostility to, that Government; but it is a government which the people of the United States have learned to trust. It is not a government of yesterday; it is not now an experiment; it is no longer a question whether it has sufficient power to maintain its own existence, or to protect its citizens measurably well, after many failures perhaps, in the substantial enjoyment of their rights. It is not a government which any body of citizens, acting through State organizations, can dissolve at pleasure. The stability of the State governments rests largely on the stability of the Government of the United States, and every citizen feels more secure in his person and property from the knowledge he has that over the constitution and laws of his own State are the Constitution and laws of the United States.

Legislative, etc., appropriation bill.

SPEECH OF HON. MARK S. BREWER,

OF MICHIGAN,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. BREWER. Mr. Chairman, it has been frequently said by those who have addressed the committee that no more important questions than those under consideration were ever discussed in this House. I fully concur in this, and yet, sir, I apprehend that the questions themselves which are now under consideration are not creating so much public attention as the circumstances or manner in which they are brought before the House at this time. During the closing hours of the Forty-fifth Congress, when the Army appropriation bill and the legislative, executive, and judicial appropriation bill were under consideration, it was sought by the majority of the House to ingraft upon them the repeal of a large portion of our statutes which the minority of the House deemed were essential to protect the ballot-box and insure free and fair election of members of Congress. We on this side of the House did not then claim, nor do we now claim, that Congress had not the constitutional power to ingraft upon the appropriation bills the proposed political legislation, but we only sought to combat, as we do now, the policy of such a course. We still insist that the proposed amendments are not germane to the bills and should be considered by themselves as independent measures. The Senate, agreeing with the minority of the House, struck out the proposed amendments to these appropriation bills, and then it was that the country was shocked by the threats of the democratic majority of the House and leading members of that party in the Senate that unless the Senate and the Executive yielded to the dictates of such majority of the House no further supply to carry on the Government should be voted. These threats were proclaimed by our democratic friends in caucus assembled as well as by leading members of that organization on the floor; and they carried out such threats and refused to pass these appropriation bills, and forced the Executive of the nation to call the Forty-sixth Congress together for the purpose of keeping the wheels of government in motion. I apprehend the business interests of the country and a great majority of the people regretted the necessity for such action. The Forty-sixth Congress assembled, and again we find ourselves confronted with these same threats from our democratic friends. They again proclaim through their secret caucus and upon this floor that unless these laws by which the General Government attempts to exercise its power to protect the ballot-box and insure a free and fair election of members of this House are wiped from the statute-books the Army must be disbanded, the Executive Departments of the Government closed, and justice go unadministered throughout the land. This is the feast that our country is invited to unless the behests of the democratic party are complied with. It is not the exercising of the constitutional right which Congress possesses to repeal these laws even by placing them upon appropriation bills, as proposed, that has been styled revolutionary by us, as claimed by our democratic friends, but it is the threatened attempt made by the democratic party that no supplies shall be voted to the Government unless the Executive of the nation shall yield his judgment and his constitutional power to the legislative and co-ordinate branch of the Government. This may justly be called an attempt to subvert the constitutional power of one branch of the Government, and is in itself revolutionary, disguise it as you may.

If these proposed amendments to the two appropriation bills shall be enacted, the inevitable effect must be to wipe from our statute-books all the power which the General Government has made effective, and attempts to exercise, to control and supervise the election of its own officers. Members upon the other side have attempted to overcome by sneers and sophistry the argument of the gentleman from Ohio [Mr. GARFIELD] by which he showed the revolutionary tendency of the proposed legislation, and in their efforts they have received the aid of the honorable gentleman from Pennsylvania, [Mr. KELLEY,] who seems to scorn the argument of the gentleman from Ohio

because he, as I apprehend, personally dislikes the man who made it. Sir, it is not the first time such legislation has been condemned as coercive and revolutionary. In 1855 the House attempted to ingraft an amendment, for the purpose of reducing the tariff, on an appropriation bill. The bill with such amendment passed the House, but as amended met with the condemnation of the ablest Senators of both political parties at that time. Mr. Seward, then a Senator from New York, declared the proposition revolutionary. Senator Clayton, of Delaware, said it was establishing a dangerous precedent, while his colleague, Mr. Bayard, the father of one of the present able Senators from that State, said:

> Such legislation strikes at the fundamental basis on which deliberative assemblies in a free government must necessarily be constituted. Though I deem the measure valuable I would rather see it lost, and rely upon the sense of the country to return representatives afterward who would pass it, than to sacrifice a great principle which I think lies at the bottom of all legislative organizations in free countries, of not permitting coercive legislation.

Here was a man who spoke as a patriot, as one who cared far more for his country than he did for any mere party advantage. The amendment was stricken from the bill by the Senate, and the House was compelled to recede. This has been the result in every such contest, and must be the result in this case.

When political partisanship shall have somewhat subsided, the better judgment of the House, I trust, will prohibit by its rules all political legislation from being ingrafted upon simple appropriation bills.

For nearly two weeks the question has been discussed of amending the following section of the Revised Statutes by striking out the words "or to keep the peace at the polls:"

> SEC. 2002. No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.

And such amendment prevailed in this House, and the section as thus amended was ingrafted upon the regular Army appropriation bill.

No one desires the Army to be used to coerce, intimidate, or interfere with electors in the performance of their duties as such, and all must regret the necessity for its use, in any case, at the polls of an election, but this amendment not only takes away the right to maintain peace at the polls by the military power, but prohibits the marshal or other civil authority from maintaining such peace by calling upon the *posse comitatus*, or any body of armed men, or citizens, to assist at maintaining peace at the polls. Can it be possible that Congress is to yield up the power which the General Government has to protect the elections whereby its own officers are to be chosen?

If the Army appropriation bill shall become a law as it passed the House, such result has been accomplished. That our democratic friends are not content to simply prohibit the use of the Army to maintain peace and order at the polls is clearly manifest by their present attempt to wipe out all sections of the statute which confer power upon the civil officers of the Government to keep the peace, maintain order, and see that a free and fair election of its own officers shall take place.

Sir, in order that the right and power of the civil officers of the Government might be preserved in such cases, I had the honor of offering the following as an amendment to section 6 of the Army appropriation bill, to come in at the end of said section as amended by the House:

> But this act shall in no way limit the right or power of the civil officers of the Government to keep the peace at the polls at such time as is prescribed by law for the election of Representatives in Congress.

But what was the result? One hundred and thirty-six democrats voted against the amendment and none for it, while one hundred and seventeen republicans voted for it and not one against it. It has been asserted time and time again by our friends on the other side of the House that the General Government had no constitutional power to protect the ballot-box and keep the peace at the polls even when Representatives in Congress are being elected, and the House by its democratic majority has said so by its votes. It now proposes to complete what it has so successfully begun by repealing all laws which authorize the appointment of supervisors to supervise the election of our own members in this House, or, if not to entirely repeal these laws, to take from such supervisors all power to stop fraudulent voting or to arrest fraudulent voters, simply yielding them the right of other citizens, to sit by like dummies to see the repeater, the bulldozer, and ballot-box stuffer ply their calling. Better, sir, by far, repeal the law entire than to attempt to maintain its shadow, thinking thereby to blind the American people. Why do our democratic friends seek to destroy these election laws? They tell us they too want free and fair elections, but that these laws are not only unconstitutional, but that they do not tend to bring about the result for which they were enacted, and they cite us to the arrest and prosecution of fifteen or twenty voters in the city of New York and Philadelphia who it is claimed were entitled to the right of suffrage but were prevented from exercising that right by such officers. They forget to tell us that in these very cities thousands of men who had no right to vote were prohibited from voting by reason of these laws having been strictly enforced. There is no law on our statute-books the execution of which rests upon the judgment of men but what will at times in its enforcement work an injury to some of our citizens. We all know that our judges of election, even under our State laws, many times err as to the right of legal voters to exercise that right, and shall we say that all our State laws enacted to preserve the purity of elections shall be repealed because they may in their execution work in exceptional cases an injury to some qualified voter?

Would it not be more wise to perfect the law than to repeal it? But we are told the law is unconstitutional; that the Government has no power to surround the ballot-box with its own officers for the purpose of interfering in any manner with elections, even where Representatives in Congress are to be chosen thereat. This clause of the Constitution has been quoted by our friends on the other side, and an attempted construction put upon it which they seem to think would sustain their position. Section 4 of article 1 of the Constitution provides as follows:

> The time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The section which I have quoted is plain and susceptible of but one literal construction. The first clause of the section makes it obligatory upon the State Legislature to provide the time, place, and manner of holding elections for Representatives in Congress, but our fathers wisely provided that Congress should have a superior power, and could make, alter, or change such regulations. When is that supervisory power to be enforced? Not, as claimed by some, only when some emergency has arisen or something has occurred to make it necessary, but that superior power is to be exercised whenever Congress sees fit to put it in force. It is true that Madison and Hamilton suggested it might not be exercised by Congress except in case of an emergency or when it became necessary to preserve or perpetuate the Government, but it never was claimed by these great men that Congress was not the sole judge as to when it should take into its own hands the supervisory control of the election of its own members. If the theory advanced by our friends is correct that Congress should not interfere in the election of Representatives until the States failed in some manner to carry out proper regulations, then, in such case, it might be entirely too late. The States might cease to elect members, and if the time for such election had not been fixed by Congress, how would the Government know whether the States were to carry out these regulations or not until it was too late for Congress to provide suitable regulations for the election of its successor? The Congress itself might have ceased to exist. The power of the Government to legislate for its own perpetuity should not remain in abeyance until some emergency has arisen which would make it necessary to enforce such power. If this were otherwise, the life of the nation would be altogether too unsafe and uncertain.

It was well said by Justice Story that this supervisory power "rests upon this plain proposition, that every government ought to contain in itself the means of its own preservation." But our friends would have us believe that this power should not be exercised or even legislation enacted which would give the Government the right to exercise it or enforce it until some great emergency had arisen. The time for the election of members of this House has already been fixed by Congress, and the manner of such election to a certain extent has been provided and regulated by Congress; and these regulations it is now sought to take from the statute-book.

Section 2 of article 1 of the Constitution provides who shall be electors for Representatives in Congress. It says:

> The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Here it will be seen the Constitution itself has fixed the standard, I might say, of the elector who can vote for Representatives in Congress. It is true that standard may be changed by the State, but when once fixed by the State the qualification is prescribed with as much certainty as if it was part and parcel of the Constitution itself. How, then, can it be said that the General Government has no supervisory power over the election of members of Congress? It is clearly the duty of the General Government to see to it that the elector who votes for such member possesses the requisite qualification, and for that purpose it has the right to supervise such elections and to appoint officers to see that none vote but those who possess the requisite qualifications, and that all shall be permitted to vote who do possess it; in other words, to see to it that a free and fair election takes place. The General Government not only has this right, but it has the power to appoint officers of its own to act as an election board when elections for members of Congress take place, and to appoint officers to arrest and punish the person who shall illegally vote at such election.

The case of The United States *vs.* Reese, in 2 Otto, has been cited here as sustaining the position assumed by our democratic friends, that the Government has no power to supervise such elections, but the case is not in point. What was that case? Certain persons in the city of Lexington, Kentucky, desired to vote at a municipal election in that city, but their votes were refused by the election board on the ground that they had not paid their poll tax, as required by the laws of Kentucky before they could become qualified voters.

The Supreme Court held that the State of Kentucky had the right to prescribe the qualifications of its electors, and that the fifteenth

amendment to the Constitution did not conflict with or take away that right.

The Chief-Justice delivered the opinion of the court, and very properly said:

> The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his color, race, or previous condition of servitude.

Here the court is speaking of State elections as distinguished from elections for Representatives in Congress or other officers of the General Government. State elections, it may be properly said, are those which are held for the election of State officers, or such officers as are to fill offices created by the constitution or laws of the State, but are not elections for the choosing of officers provided for by the Constitution and laws of the United States.

When an election is held for a Representative in Congress alone, we would scarcely think of calling it a State election. The case in no manner sustains the position taken by our friends on the other side, but by implication is an authority against their arguments. We apprehend no one would deny the power of Congress to provide that the election of members of Congress should be by ballot instead of *viva voce*, as now seems to be the regulation in Kentucky. If Congress has that power, has it not also the power to protect the ballot and see that it is properly counted and legally cast by a legal voter?

Our democratic friends tell us that they desire to repeal these laws in the interest of free and fair elections, but if free and fair elections be their object, why should they not seek to perfect these laws instead of destroying every safeguard which seeks to protect the legal voter and prohibit the illegal from voting? Sir, the history of the democratic party would scarcely warrant us in believing that our friends were sincere in their pretended zeal for free and fair elections. Who ever heard of the democratic party having enacted a registration law or any other law, in any State, that would retard the work of the repeater or hinder the illegal voter from casting his vote? In many of the States registration and other laws to protect the ballot-box have been enacted by republican Legislatures; but when the power was returned to the democrats they have repealed and struck down such laws, as they seek to repeal and strike down this law relating to the power of supervisors and marshals. The democratic party has always profited too much by fraudulent votes and fraudulent voting to desire the ballot-box to be protected by the strong arm of the Government. The controlling of elections by reason of fraudulent voting seems to have first been brought prominently into use under the auspices of the Albany regency as early as 1838, and this manner of carrying elections has always been freely exercised by the great Tammany society, which has controlled the democratic party in the State of New York for years. There are many members on this floor who will remember the great frauds that were committed in some portions of the State of Louisiana in 1844 whereby Henry Clay was deprived of the electoral vote of that State. More votes were cast, it is said, in Plaquemines Parish at that election than there were men, women, and children living in the parish, or ever have lived within it at any one time from that day to this.

If it were true, as claimed by the democrats, that President Hayes was not entitled to the electoral vote of Louisiana in 1876, it is a thousand times more true that Mr. Polk was not entitled to it in 1844. Here is the distinction between the republicans and the democrats: The republicans are for maintaining the laws for the protection of the ballot-box, if we have them, and if we have them not, of creating and so perfecting them that fraudulent voting cannot take place, while the democrats are for repealing all laws which tend to obstruct illegal voting. Who does not remember the democratic frauds upon free elections in 1856 in Philadelphia, where thousands of illegal naturalization papers were issued and scattered over the State of Pennsylvania and used to aid in the election of Mr. Buchanan? It is said many of these fraudulent naturalization papers were sent out under the frank of a then democratic United States Senator from that State, and who in 1876 having retired to private life, and having no frank to use, turned his attention to the transmission of cipher dispatches from Florida to Gramercy Park in the interest of Samuel J. Tilden. It was said by the report of the congressional committee who investigated the election frauds of 1868 in the city of New York that "all frauds in our past history, appalling and startling as they have been, were surpassed by those perpetrated in the State and especially in the city of New York. They were the result of a systematic plan of gigantic proportions, with the direct sanction, aid, or approval of many prominent officials and citizens of New York."

It has been shown over and over again that at said election thousands and thousands of votes were cast in New York on fraudulent naturalization papers, and thousands more such papers were sent into other States, a blank being left in such papers to be filled by the name of the person who should vote upon the same, and many illegal votes were cast on these papers in Ohio, Connecticut, New Jersey, and other States.

Sir, it was openly and publicly charged by the late Horace Greeley that Samuel J. Tilden was then a promoter and aider of, and an abettor in, the fraudulent voting in New York in 1868. His letter condemning Mr. Tilden and his henchmen in those fraudulent transactions was read here the other day. The country understands full well that this raid on our election laws is made at the bidding of this same man who was so charged by Mr. Greeley, and in his interest as the probable democratic candidate in 1880. These laws are not to be repealed in the interests of free and fair elections, but that the ballot-box may be free to the plug-uglies of Baltimore, the repeaters of New York, the bulldozers of Louisiana and Mississippi, and the tissue-ballot box stuffers of South Carolina. As I said before, if these laws are not perfect, if they do not accomplish what was intended by their framers, perfect them by amendments in such a manner that every legal voter in this land shall have a chance to express his choice at the polls in accordance with his own free will by the casting of one vote, and only one vote. Perfect them further so that the man who is not lawfully entitled to vote shall not exercise that right, and then, sir, when this is done, I would make provision for the enforcement of that law in the election of the Government's own officers, if necessary, by all the power the Government can control. The people will not believe in these shallow pretenses for free and fair elections unless you make them free and fair by legislative enactment, and see that such enactment is enforced by the strong arm of the Government. The manner in which it is attempted to repeal these laws is unusual, to say the least. Both Houses of Congress and the Executive concurred in the wisdom of their enactment in 1871, and it is evident they cannot be repealed except by such concurrent action. Why not let these amendments rest upon their own merits instead of making the support of the Government dependent upon the repeal of such laws?

This system of legislation is vicious, and must in the end meet the condemnation of the people.

It is conceded that Congress has the power to tack this political legislation upon these appropriation bills, and it must be conceded that the President has the constitutional right to withhold his approval of the bills as thus amended. Should he in his judgment withhold such approval, Congress must yield or the functions of the Government must cease. An issue will thus be formed which can only be settled by that great arbitrator, the people, whose judgment cannot be invoked until November, 1880. Who is there bold enough to say that the functions of this great Government shall remain in abeyance until that time unless statutes of a political nature are repealed? Would it not be more reasonable, more wise, to pass our appropriation bills so that the duties of the Government shall be performed, and then settle the conflicting questions hereafter. There is no conflict as to the appropriation bills themselves, and in their passage and approval neither branch of the Government would be coerced into doing that which one or the other would deem unwise or wrong. Sir, it will not do to let the nation die for want of sustenance during this political contest that is threatened.

At times in 1861 to 1865 we saw the democratic party, as a political organization, seemingly willing that the Union forces should meet defeat while contending for a united country, believing such defeat would destroy the republican party and restore the democratic party again to power; so that political organization again seems willing to see the Army disbanded, the executive offices closed, and the judicial functions of the Government cease, in order that the executive department of the Government may pass into the control of the democrats in 1880.

Sir, the republican press and the Representatives of that party on this floor are charged with fighting over the battles of the rebellion and firing the northern heart with scenes enacted in that bloody conflict; but this is a mistake. Six months ago the people at the North seemingly felt willing to let the war and its carnage and blood drop from political or partisan discussion. They recognized the fact that as the Union had been restored, so should a union of sentiment exist among all the people. Public speakers of all parties at the North, in the last campaign, scarcely alluded to those who fought against the Government, while the desire to "let the dead past bury its dead" seemed to prevail among all classes of our people. But that sentiment, I am compelled to say, exists not to-day. It cannot be denied that there is a deep, anxious feeling in the minds of our people—and why is it? It is not simply because they see the democratic party, as such, in power in the legislative department of the Government, but they see a majority of the Senators and members of the House belonging to that organization are of those who sought to destroy the Government. They see that majority controlling the action of the democratic party. They read from the southern press the boast that the people who were against the Government but a few years ago are to control it in the near future; that they have secured, by intimidation and fraud, what they failed to secure by war. They see that the leaders of the democratic party were but recently the leaders of the rebellion, and they hear these men in the Senate Chamber, and in this House, as they in rounded periods and eloquent tones utter the dictates of their party caucuses that the laws to protect the ballot-box and insure free elections must be repealed; not only this, but that all laws which were enacted to save the nation in its hour of trouble, all laws to protect the unfortunate freedmen, all laws that tend to make distinction between loyalty and disloyalty, are to be repealed from our statute-books. As the people look at the democratic party thus in power and so controlled, as they read the threats of the southern press, as they listen to the announcement that our statutes are to be emasculated as I have stated, or the functions of the Government must cease, they feel lost in amazement to find the safety of the country, that they sacrificed so much to save, now in the con-

trol of those who sought to destroy it. They are alarmed, and the instinct of their nature compels them to discuss the lessons of the past.

But let me say the people of this country do not intend that the Army shall be disbanded or that the wheels of this Government shall stop, and they have commenced to express their views upon the subject at the polls. I shall not trespass upon the time of the House in referring to the atrocities committed in some of the Southern States upon unoffending citizens because they seek to exercise the right of suffrage in accordance with their own free will. The commission of these offenses cannot be appeased by excuses or controverted by sophistry. The offenders have gone unpunished, and justice has been defrauded thereby, and these facts rankle in the breasts of the good people all over this land. Stop these cruelties, and the war and its attending evils will pass away. Continue them, and the better judgment of the American people must be evoked in every political contest until the guilty are punished and justice shall prevail from ocean to ocean and from the lakes to the Gulf.

Legislative, etc., appropriation bill.

SPEECH OF HON. J. WHITEAKER,

OF OREGON,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. WHITEAKER. Mr. Chairman, I do not know that I ought to say anything in regard to the passage of the bill now pending before this committee; so much has already been said and so well said that there is but little left unsaid worth the uttering, and repetition becomes tedious. I believe that my people would prefer more voting and less talking. Still, in order that I may not be misunderstood by those who sent me here I will avail myself of this opportunity, so kindly extended, to place myself on the record.

The arguments both for and against this bill are substantially the same as those offered when the Army appropriation bill was before this committee, which bill passed the House a few days ago, and they are still fresh in the minds of gentlemen upon this floor. Early in the discussion of that bill it was held by those opposed to its passage to be revolutionary to pass such a measure, and that those who favored it were actuated by the same motives and prompted by the same spirit that southern men were in 1861, the only difference being that then they tried to shoot the Government to death, but failing, they now propose to starve it to death.

Mr. Chairman, what is this Government that any American citizen should wish to starve it to death? If the process of starvation should be inaugurated where will the hunger and emaciation first become manifest? What part of the Government will first show signs of the distress incident to hunger and starvation?

For my part I have never been able to see just where the people stopped and the Government began, or where the Government halted and the people set in. I have always thought that this great Republic of ours was a government of the people, for the people, and by the people, and that any great calamity that might come upon this country would affect the people directly and to a much greater degree than it would the few who might happen to be their agents, for the time being, to administer the laws and their Government. But no one believes that any gentleman upon this floor wishes to starve himself or in any way impair the vigor of the governmental machine, and if the necessary means for carrying on all the different departments thereof are not supplied it will not be the fault of the advocates of this bill.

The ablest of those who opposed the Army bill on account of the repealing clause incorporated in it—and whose great abilities we all acknowledge—declared again and again to this House that they were ready to vote for that repealing clause if it were placed alone as a separate and distinct bill, thereby acknowledging and confessing that repeal was just and right, for it is not to be supposed that they would vote for a measure that they were not fully convinced was right. They have also told us that they would vote for all the clauses relative to the appropriations. Now, if they are ready and willing to pass in separate and distinct form, requiring two votes, what is grouped here in one bill, requiring but one vote, why, I ask, do they oppose it? If the bills fail to become a law and the necessary appropriations are not made, it will be due, not to the party that passed them and voted for them, not with the people must the fault rest, for they, as represented by a majority here upon this floor and in the other co-ordinate branch of this Congress, will have granted the necessary supplies to meet all the demands of the public service, and if they are not made available, then must the fault of the starvation, of the new revolution, of the overturning of the machinery of the Government, with which the minority have threatened us, be traced to their door, to those public agents who shall refuse to receive and administer those funds in accordance with the wishes of the people as expressed through a majority of their representatives both upon this floor and in the Senate.

I do not know whether either of these bills will pass the Senate; I have no right to know; but I may be permitted to say that I believe that they will; because I believe that they ought to; neither do I know what will be the action of the Executive should they be presented to him for his approval. I can only say that if these appropriation bills shall pass both Houses of Congress and yet fail to become law, and confusion shall follow, as it certainly will, those, and those only, who stand in the way and defeat the will of the majority of the people as expressed through their chosen Representatives in Congress must take the responsibility for the consequences of such rashness, the result of which no man can foresee. But I am not one of those who can bring themselves to believe that the Executive will refuse to approve measures so eminently just and necessary, and measures of which he stands on record, both by his letters and by his actions in the South, as favoring.

I shall not undertake to marshal precedents, tradition, or constitutional warrant for the propriety or right of legislating in the manner proposed by this bill. All these have been fully shown by those who have preceded me in this discussion, and I will not repeat them here. Sufficient to say that it has been the custom from the earliest days, and by no party more than that which now for the first time in many years is in the minority in both branches of Congress, and who, strange to say, in all their eighteen years of power, never discovered how wrong, unjust, and revolutionary it was. It does seem to me, Mr. Chairman, that their record of the past and their talk of to-day is too much at variance and too inconsistent to have any effect upon the honest, fair, and unbiased minds of the great mass of our people. It does seem to me, sir, that it must strike them as it does me, as the last desperate effort of the dying party to create a false issue, to arouse old sectional strife, to call into life all the hard and bitter feeling of a man's nature, in order to save to themselves for a little longer the patronage and power of the Government. Mr. Chairman, I cannot believe that the workers and toilers of our land, the voters, the tax-payers, will allow themselves to be made the dupes of designing political politicians, who see in the loss of power by their party their own death.

The drift of the republican party toward centralism is aptly illustrated by the election laws which are its handiwork, and which we, the democratic party, as the true champions of that perfect liberty and freedom from control by the Federal Government of local and State rights which were guaranteed us when this Union was founded; as the true exponents of that spirit of federalism as held by those who framed the Constitution, that instrument upon which our whole framework of government is based, are striving to repeal, and for the reason that although the clauses of the Constitution show that Congress has some power over the election of its members they do not show that it has a right to paralyze the action of the States. Any Federal legislation which hinders the States in protecting their own interests and expressing their own views through their representation in Congress and which gives to the political party in power at the national capital, or wielding the executive authority, the means of dragooning the States into involuntary subservience to its behests, is not in accordance with the spirit of these provisions of the Constitution nor with the spirit of a true federalism.

I know that the mind of the American people revolts at the idea of Federal interference with local elections; and yet are not all elections local, all being conducted under State laws, and although the laws relative to Federal interference at elections, which we propose to repeal, carry upon their face only the right to control the election of Congressmen and presidential electors, yet every voter must know that the right being granted to interfere at the elections of these officers practically grants the right to supervise and control the election of all State officers who are elected upon the same day, for it is in practice impossible to separate a State officer from a presidential elector or Congressman when they both stand upon the same ticket, and the act of the Federal Government that would restrain a man from voting for one would prevent him from voting for the other.

The right of States to regulate their internal affairs, including that of elections, is a right too dear to American freemen to be easily surrendered, and it must not be given up to those who, however honest the intention or pure the motive by which they profess to be actuated, have every incentive and temptation to abuse and prostitute the same to serve base and vile political ends.

Mr. Chairman, I have often asked myself the question which I now desire to ask of every gentleman upon this floor, of every citizen of every State in this land, and I await an answer feeling that truth and candor will compel one that will sustain my party and myself in our views. If we yield to this claim of the right of Federal control of the election of members of Congress and presidential electors, how long will it be before we will be called upon to yield the right of controlling the election of the members of our State Legislatures? Under the same clauses of the Constitution which our opponents are now quoting as showing the right and authority of Federal interference and control of elections of members of this House (the power over the election of Senators being the same) the party in power could claim the right to control the election of our State legislators, and if we grant the right in the case now under consideration and

leave these laws unrepealed we must admit the right in the other and thus little by little all local and State affairs would be virtually absorbed and controlled by the central government and the will of the people be made subservient to the will of scheming and designing politicians.

If it be right in principle for the General Government to supervise the election of members of this House then why not the election of United States Senators? Congress has as much right to look after the qualifications of the electors of Senators as of members, and foremost among these qualifications is the fact of having been elected in a proper manner. The principle, once recognized and become a part of our system, must lead to the subversion of good or free government. We ought not to allow our passions to control our judgment, nor should it be warped by party ties and affiliations. The General Government neither makes nor has voters as such; the States respectively prescribe the qualifications of all voters within their limits and they enact the laws under which all general elections are held, and they are, or ought to be, the only power known at the polls.

The character of the legislation upon the statute-books attempting to legalize Federal interference at the polls, all tends toward centralization of power and is not consistent with the true idea of the founders of this Union, and in addition to this, in the power which it confers upon Federal officials of making arbitrary arrests and depriving citizens of their lawful right to vote, is at variance with the principles of civil and political liberty. These Federal election laws are therefore largely unconstitutional, and should be shorn by the Federal Legislature of their obnoxious features at the earliest moment consistent with a due discharge of other duties, a due regard for the constitutional independence of all its branches, and a due compliance with the requirements of common honesty, and thus it is that we of the majority have incorporated these repealing and modifying clauses into the first bills brought before this Congress, and which we would have been ready and willing to vote upon and pass long ago had not the party in the minority seen fit to oppose and obstruct all business in the vain attempt to create campaign capital.

If the bill shall pass, it is the plain duty of the Executive to cooperate in the execution of our design. The plea that this legislation is needed for the suppression of fraud is a futile one. This, even if it were anything but a pretext, is no apology for usurpation. Hear what the Father of his Country says upon this important subject:

> Let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Centralism—the doctrine or feeling that the constitutional powers of States must yield to the occasions and tamely submit to the encroachments of the central government—is unfavorable to the interests of good government, tends to make popular self-government a name and pretense, turns local self-government into a mere indulgence instead of an indefeasible right.

That wrongs more or less grave are perpetrated almost everywhere on the day of an election, both North and South, is doubtless true; but they are wrongs inseparable from any system of popular elections and are common to all parties, and are far less grievous to be borne than the radical wrong of Federal interference.

Mr. Chairman, it is apparent to all that the friends of this bill and of the one lately passed by this House stand before the country, in a partisan sense, the antagonists of those who oppose it, and who in the matter of this legislation are said to be in strict harmony with the Administration. Sir, I recognize the fact that the democratic party will be held responsible for the repeal of these laws, if they are repealed, just as the republican party is responsible for their enactment, and I for one do not desire to shirk my part of the responsibility, humble as I know it to be, that may attach to those who vote for that repeal. Gentlemen who oppose this legislation and who have for the last twenty years been at war with those who favor it have all at once become suspiciously zealous for the prosperity of the democracy in the future, and appeal to us not to pass this bill if we have hope of success in the future. Of course we should feel grateful for such sincere, wise, and friendly advice, but we must be pardoned for looking upon such kindness with suspicion, and knowing these gentlemen as we do, their untiring and indeed unscrupulous efforts to maintain their political ascendency we trust they will forgive us if we do not follow their advice, and if the country will not sustain us, if the American people are ready to yield their political freedom, their right of free elections, if they are ready to yield the power of the ballot into the hands of a few men who happen to be in power and who have every temptation to use that power for their own aggrandizement and profit and to stifle the popular will when it is not in harmony with their own interests, then, indeed, it matters but little what party is in power or what laws are repealed or what remain upon the statute-books.

Now, Mr. Chairman, I do not wish to take any part in the criminations and recriminations that have been indulged in during this debate; to me it seems that the occasion is one which should cause us to rise to a higher level. My duty here is first to fully, fairly, honestly, and intelligently represent the people who honored me with a seat upon this floor. In this matter I believe I know their will, and I have tried to carry out their wishes. At the election in my State it was my good fortune to receive many republican votes, and I fully believe that they will sustain me in the votes I gave upon the Army bill and the vote which I expect to give upon the bill now under consideration. If I did not believe the legislation now sought to be had was in the interest of American freedom and will tend to perpetuate those free institutions which are the pride of every true citizen, I would not support it. Strong as are my party ties, no power can force me to support a measure which my judgment does not approve. I shall support this bill, and I trust and believe it will become a law. I am anxious to return to the Pacific coast to meet the people whose servant I am. As to their approbation, I have no fear, for I have honestly tried to do my duty, and in a way to best serve their interests.

Legislative, etc., appropriation bill.

SPEECH OF HON. D. L. RUSSELL,

OF NORTH CAROLINA,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. RUSSELL, of North Carolina. Mr. Chairman, this extra session has been made necessary by the conduct of the Democratic party in refusing to grant supplies for the maintenance of the Government save upon condition that certain laws deemed by them dangerous to their own success in 1880 should be repealed. Some of these laws are *per se* wrong and ought to be repealed, others are right and essential to free and fair elections, and their repeal means only that the popular will may be reversed by repeaters, ballot-box stuffers, and false and fraudulent returning boards. The Democratic party has been in power in this House since the 4th of March, 1875, and never until this winter discovered that these laws ought to be repealed. The two that are obnoxious on principles of reason, justice, and sound statesmanship—the jury test-oath and the clause allowing soldiers to keep the peace at the polls—can be repealed by a separate act for that purpose in twenty-four hours. This is known to all. It was well known to the Democratic caucus which controls this House; but that caucus directed that these measures which they advocate and pretend to believe to be of such vital concern to the county should not be brought forward in the form in which they would certainly pass. Why not? Because that would not give a chance for agitation.

The campaign of 1880 is approaching, and material for it must be found. The country is disposed to regard as settled the issues of the war on which both the old parties are still living and seek to live—living for no honest purpose, so far as reasonable men can see, unless it be to save funeral expenses. So regarding it, the people are anxious to turn their attention to questions of finance, of trade, of currency, and of political economy. Throughout the land there is distress, enforced idleness, fearful destitution, and hopeless poverty. For four or five years men have seen that honest toil has no rewards, that no business pays, that nothing is valuable except money and bonds. Despair is written on every heart except that of the money-eyed capitalist and bondholder. The people of my State are poorer than they were one year from the day the confederacy surrendered.

The men of enterprise who borrowed paper money, or, what is the same thing, got credit on a paper basis, have been annihilated by being compelled to pay gold with their products at gold prices. They have been beggared by the policy of the knaves and fools who talk about "good money." Yes! Good money! We have got it—money that is good, so good that nobody but the rich can get it—so good that three times the proper amount of labor and the products of labor are required to get a dollar of it—so good that the lordly owners of it can buy with a little of it whole counties, cities, and States. And yet this money thus put beyond the reach of the poor is a thing which your laws require them to have. They must pay taxes with it, and debts with it, and exchange commodities with it. For it there is no substitute. Any other article of human desire when pressed beyond the reach of toil may be dispensed with and another put in its place. If pork is too high, beef may be used. If wheat is too scarce, corn will answer. If cotton goes out of reach, men may wear wool, or flax, or furs. But money every man must have or go to jail. If he can not get it your law will sell his house, his horse, and the coat from his back, and then imprison him for a vagrant and tramp. By the organism of society there is for this one thing which we call money an unceasing, constantly increasing, and indispensable demand. To cut off the supply by reducing its volume, and thus enable the few who have it to horde it, to lock it up in interest-bearing bonds, and then to laugh at the struggling millions who are compelled to toil for it, is a crime against humanity.

And, sir, for this crime the democratic and republican parties are before God and man responsible. They have done it, and having done it, persist in perpetuating the iniquity. The republican party has long since ceased to cover its guilt, but openly and shamelessly boasts of its own wickedness. But the democratic party has until

recently sneaked in the dark and dodged from the view of an inquiring and despairing people. In the West and South its leaders have pretended to be the only sound greenbackers. By this false pretense and by means of the liberal use of swindling returning boards they have got the control of this house. How have they used it? Their first act was to elect a hard-money man to be its presiding officer. Every democrat from North Carolina voted for this hard-money Speaker. Gentlemen from my state, whose constituente are ruined by resumption, voted for a resumption man. In the Senate it has organized in the same interests and for the same purposes. Its whole purpose is to keep the money question out of the next campaign or leave it open, so that it can be for paper money in the South and West and metal money in the North and East. It is a hard-money party by tradition, past platforms, and present practices.

Ignoring the cries of an impoverished people, the democratic party is preparing to take the Government in 1880 on the cry of fraud by showing how it was cheated out of the Presidency in 1876. But let it be remembered that so far as is known it holds its majority on this floor by the very same returning-board villainies which it charges upon the republican party.

In the organization of this House, there being two hundred and eighty-seven seats, the nominee of the democratic party received 144 votes, his own vote would make 145, which was the full strength of the party in this House. It is well known that two democrats, one from Florida and the other from North Carolina, hold seats on this floor, not by the vote of the people, but by the fraudulent mandates of returning boards, some of whom, strange to say, are in the penitentiary. Take out these two votes, and add to the opposition the votes of the two men who have been defranded of their seats, and you have an opposition vote of 144, being a clear majority of all the members of this House; so that but for the returning-board iniquities, the national party would have the balance of power in this House.

The government of "gentlemen and niggers" which the confederacy was to be—that is, the slaveholding class and its appendages, which was to be an order of nobility with hereditary privileges, called "gentlemen," the laboring whites, who were to be a disfranchised peasantry, on the middle ground between the "gentlemen" and the "niggers," and the negroes, who were to toil as slaves in the cotton and the cane—this government as an independent nationality went down before the vast armies which followed in the track of the little army of John Brown at Harper's Ferry. But its spirit, principles, and purposes still survive, not in all the white men of the South, but in the many who constitute the class aptly called Bourbons—a class which is yet powerful, and largely controls the democratic party of the South. These men pretend to be for the Union and the Constitution as it is, while in the same breath denouncing as tories, scalawags, and traitors the men who see in the failure of the confederacy the triumph of popular government and human rights. But there is just one question which they have never answered. It is this: If you believe, as you say you do, that secession was right and its failure a calamity; if you believe, as you say you do, that freedom shrieked when slavery fell; if you believe, as you say you do, that the purposes for which you went to war were just and right and noble, why will you not accomplish these purposes whenever you get the power? Principles do not change. If slavery and caste and aristocracy were right in 1860 they are right to-day; and if, believing they are right, you have the power, why not re-establish them? If constitutional prohibitions stand in your way, if you have the power, why not abrogate them? If you cannot abrogate them, why not enact into laws the nearest possible approach to these good and noble institutions?

The democratic party broke up the country in 1861, precipitated the war, set up an independent confederacy and drove the whole South into it, established a military despotism over the South as arbitrary and as devilish as the world ever saw, drenched the land in blood, and carried desolation and ruin to the people of half the continent.

If I believed now on all these subjects as I did believe when in the confederate army and a slaveholder, if my opinions had undergone no change, it would be with me simply a question of power. If I believed as the Bourbons do, that slavery was right, best for the master and best for the slave, and the true and rightful order of society, then, if I had the power, I would restore slavery. So with the principle of secession. So with the doctrine of State rights. So with all the questions which some say were "settled by the war." How did the war settle anything, except that the North had more men and material than the South? It did not change principles; it did not make right wrong nor wrong right. The weaker party succumbed; it gave way by sheer exhaustion. If that weaker party shall become the stronger one, shall have full power in all branches of the Government, still holding to its principles, believing in its doctrines, changed in none of its opinions, is it not its manifest duty to enforce those doctrines which were by the brute force of war cloven down on the field of battle? Is it answered that the South is under pledges? What sort of pledges? Certainly nothing more than the paroles which bound them to obey the laws. But the Bourbon South is now about to make the laws. Southern Bourbons, as the bloody experience of fourteen years of peace clearly shows, are not so good at obeying laws as at making them for other people to obey. Are they under any pledges as to what sort of laws they shall make? Do they not tell you constantly, never allowing you of the North to forget it for a moment, that they come back to these halls your peers? And they are your peers. They can be nothing else without destroying the whole framework of government.

This Bourbon democracy, representing on this floor the cotton States, its old home, and representing them, as every intelligent man in America knows, against the wishes and unheard voices of a large majority of their people—unable to suppress its revolutionary tendencies, even until after it has captured the Government, now declares that certain measures shall be adopted or the Government shall be broken up. Their cry is "not a dollar for the Government unless you comply with our demands." This menace has been made and executed by the British House of Commons in the past and on proper occasion would be again. It is the unwritten constitutional rights of the British Commons. It is the method recognized by the British constitution of appealing to the people against the Lords or the Crown. No such power resides in the American House of Representatives, because here the appeal to the people at short intervals is mandatory and fixed. The concurrence of Executive and Senate is required for all legislation. The absolute independence of each is guaranteed, and the remission of all to the people is established. The assumption by one House of all legislative power by a refusal to give supplies save on a compliance with its will is not only revolution but it is treason.

The ascendency of Bourbon democracy in the South is a menace to free institutions. It means retrogression and reaction. It means just what the restoration of its prototypes, the Stuarts and the Bourbons, meant in England and in France. It means the minimum of liberty to the many and the maximum of power to the few. It means the denial of education to the masses and the active propagation of ignorance among them. It means a return in some form to those manners and customs under which humble birth was a calamity which nothing but the grave could conquer, and honest toil a disgrace for which nothing but wealth could atone. It means the adoption of such a policy as shall encourage the aggregation and prevent the diffusion of estates, so that the rich shall become richer and the poor poorer as time rolls on. It means that liberality, moderation, progress, advanced thought, universal toleration shall be prostrate in chains, and intolerance, bigotry, insolence, and prüle reign supreme.

Already there are signs indicating that the Bourbon slave power of the South is preparing to strike hands with the money power of the North for a common assault on the rights of labor. Does the appearance of Bourbon Senators with hard-money tenets from the cotton States mean nothing? There is a common instinct and a common interest between them. There is with both that same contempt for poverty as a lower order of society which is incident to all priviledged orders, the same disposition to defer to the manners and customs of aristocratic countries, the same sneer for the free and self-governing communities of the great Northwest. True, the Southern Bourbon is poor, but not in land. He and his kin are too lazy and too proud to work, but their "respectability" remains. "My father was a slaveholder" is a sufficient certificate of character.

The money king of the North has the same contempt for the Irishman who blacks his boots and drives his carriage as the Southern Bourbon for the negro who works in his sugar-field. The Irish bootblack and the negro field-hand are both poor. The more pauperism, the cheaper is labor. The more cheap labor, the greater the power of capital. "They are down; keep them down," is the motto of their respective masters. The greenback policy would disenthrall labor, make the rates of money cheap and the payment of debts easy, increase values, put money within the reach of men of small means, and thus lead to the division of the baronial estates of the South and the diminution of the power of the money and bonds of the millionaire of the North. And so we see the old slave power and the new money power preparing to coalesce to prevent it.

The white men of the South are not all Bourbons. Thousands of them—many of them slaveholders and the sons of slaveholders—have met the poverty and ruin entailed by war with a steady courage and heroic industry worthy of far better reward than they have received. In every county and town in my State I can show you some young men, reared in luxury and impoverished by war, who have met adversity with the same dauntless valor which they displayed on the battle-fields of Virginia; who are not ashamed to work for their living, and who feel that they can look up and be proud in the midst of their toil. These are the men to whom is committed the high duty of driving out the spirit of caste and building up their States.

Let them cultivate and constantly inculcate those ideas so essential to our prosperity—loyalty to the Union and the Constitution as it is, equal rights of all men before the law, the protection of the poor and the humble, unqualified obedience to law. Let the country see that this is done, and the time will come when the remembrance of the war, with all its bitterness, will have passed away; when the men who fought will be known only as soldiers of the country, alike entitled to its bounty. I am not afraid to say that I hope the time will come when the poor confederate soldier, hobbling on his crutches, will be pensioned by this Government. If any man wants to take that up on this floor I am ready to discuss it and to take the full responsibility of what I say. But before that time comes the other changes which I have indicated must transpire. There must be un-

qualified loyalty to the flag, universal obedience to and absolute equality before the law, complete toleration, entire freedom of speech, of thought, and of action. This cannot happen till the last vestige of Bourbonism is trampled out; until the white South shall cease to whine and weep over the lost cause, and shall frankly and sincerely confess that the God of battles was right and we were wrong.

Legislative, etc., appropriation bill.

SPEECH OF HON. G. A. BICKNELL,

OF INDIANA.

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. BICKNELL. Mr. Chairman, the bill now under consideration makes an appropriation for the courts and juries of the United States, with provisions, first, diminishing the per diem pay of jurors; second, repealing so much of section 800 of the Revised Statutes as excepts Pennsylvania from the operation of the general law; third, repealing sections 801, 820, and 821 of the Revised Statutes; fourth, establishing the mode of selecting jurors and their term of service; fifth, repealing sections 2016, 2018, and from 2020 to 2027 of the Revised Statutes, both inclusive; sixth, amending section 2017 by striking out the words "and required;" seventh, amending section 2019 by striking out the words "for the purpose of engaging in the work of canvassing the ballots," and also the words "in respect to such canvass."

To this legislation two objections are made: it is alleged to be wrong in substance and also wrong in place. The same objections were made to section 6 of the Army appropriation bill, and they may all be considered together. There are two answers to the assertion that this legislation is not right in an appropriation bill: first, this legislation has its present place under a rule of this House established deliberately, after full consideration and upon conviction that its advantages largely overbalanced its disadvantages; such being the case and the rule remaining in force, it is no valid cause of complaint that we follow the rule. That is a sufficient reason, but there is another: this legislation has its place in accordance with the well-established usage of both Houses of Congress; in at least twenty instances in the last twelve years general legislation has been annexed to appropriation bills under the control of the republican party. These answers are together conclusive; the republicans are fairly estopped from any objection to the place of this legislation. But, Mr. Chairman, this legislation is not only right in place, it is also right in substance; its object is to secure free elections and impartial juries.

In 1865, when the republicans had a majority, it was found necessary to restrain the illegal interference of the United States with State elections—there had been too much of it. Many republicans who had not complained of it during the war were unwilling to tolerate it in view of returning peace, because it was an outrage which war only could palliate. Therefore the act of February 25, 1865, chapter 52, was passed by a republican Congress. It provided that no United States officer should have armed men at the polls at any State election "except to repel the armed enemies of the United States, or to keep the peace at the polls," and this was enforced by a penalty. These provisions are now in the Revised Statutes, the prohibition in section 2002, and the penalty in section 5528. This legislation was in the right direction, its tendency was to restrain abuses unknown before the war, which had grown up during the war, and remained to be cured among the restorations of peace. In the language of the gentleman from Ohio, [Mr. GARFIELD,] "it was time they were mustered out."

Perhaps this legislation of 1865 went as far as the republicans of that day could safely go; however that may be, we can surely go further in the same direction now; it is our duty after thirteen years of peace to complete the good work begun by republican legislation, but left imperfect; this is precisely what the sixth section of the Army appropriation bill proposes to do; it proposes by striking out the words "and to keep the peace at the polls" to confine Federal interference by soldiers at State elections to one case only, to wit, the repulsion of the armed enemies of the United States. The theory of our institutions is that the States are able and willing to keep the peace at their own polls; when this shall cease to be true, popular government will be a failure and imperialism a necessity. The right to keep the peace in its own dominions is an essential attribute of sovereignty.

The notion that one State can lawfully interfere by force of arms to keep the peace in another State; that any distinct body-politic can lawfully interfere by force of arms to keep the peace in another body-politic, is incompatible with the independence of the State interfered with; it is subversive of freedom; it violates that English liberty brought here by our ancestors and reinforced here by their descendants. The legislation of the sixth section of the Army appropriation bill is, therefore, right in substance, and it is no wonder that enlightened republicans on this floor have admitted it to be right in substance.

The disputed provisions of the legislative, executive, and judicial appropriation bill require some consideration of the statutes sought to be repealed, the circumstances under which they were enacted, and their consequences.

So far as sections 800 and 801 of the Revised Statutes establish a peculiar rule for Pennsylvania, operating nowhere else, no reason is apparent for any such discrimination. The law making such discrimination evidently ought to be repealed. No defense for it has been attempted, and none can be made. Sections 820 and 821 of the Revised Statutes were passed in 1862 in the heat of civil war, when families were divided, brother fighting against brother, father against son. These sections were the result of the astonishing animosities always produced by such a conflict. Section 820 made it a disqualification for a juryman not only that he had borne arms in the rebellion, but that he had given any assistance, even food or clothing to his own child who had joined, or intended to join, the confederates, or had advised anybody else to do so. Section 821 required jurors in the United States courts to swear that they had not joined the rebellion nor given it aid or comfort, nor given any assistance to any one that had joined or was about to join in the rebellion, nor had advised any one to join in the rebellion.

These sections were enacted for a state of war, they were never intended to be permanent or universal; when enacted they could not be applied to the States in rebellion, because they had no United States courts or juries; these statutes were designed solely as measures of defense for the Northern States while the war lasted; the purpose of the war was to bring the revolted States back to their allegiance; if these enactments were necessary as war measures in the Northern States during the war they are clearly no longer necessary now, when the objects of the war have been accomplished and all treasonable acts condoned. The enforcement of these statutes now involves the gross absurdity that men, North and South, competent to fill the highest public offices, are excluded from juries by reason of past constructive treason long ago pardoned; men fit to be judges of the courts, members of this body, and Cabinet officers of the Government are held unworthy to be jurymen. When the reason of a law ceases the law ought to cease.

Sections 2016 and 2018 of the Revised Statutes, and sections from 2020 to 2027, both inclusive, occupy a different position; they were enacted in 1871. At that time the republicans had the President, both Houses of Congress, and all the office-holders; but it had already become apparent to certain sagacious leaders that the reconstruction of the Southern States and the growing disgust of the Northern States with the crowd of adventurers who had been rioting in the high places of the Government would ultimately bring another party into power unless some counteracting scheme could be devised. If the republicans could control the elections their waning power might be re-established. The reckless leaders were ready for anything. Honest men among the republicans had been taught to believe that public safety demanded republican rule. They could readily think well of any measure adopted to secure that result. The Constitution gave Congress the right "to regulate the manner of holding" congressional elections when the States failed to do it or did it imperfectly. It was easy, by liberal construction, to extend the meaning of that language so that "the manner of holding elections" should embrace absolute control over the voter and his right to vote; and then, on pretense of "regulating the manner of holding elections," the General Government, by its paid officials, would exercise absolute power over the elections of the States and mold them at its will. It was enacted that the voting should be by ballot and the elections held on the same day in all the States; and, as the States generally elected their principal officers on the same day with their Congressmen, the paid officials of the party would not only control the election of Congressmen, but that of State officers also.

It was a crafty and well-considered scheme. The States had been controlling their own elections; the theory had been that the people ought to control their own elections; they had been deemed competent to do it; it had been considered a wise feature of our system that local affairs were to be transacted by the people themselves in their own neighborhoods; but the pretense was made that the States have become unable or unwilling to prevent fraud, that the people can no longer be trusted with their elections; but that the General Government is honest, and will give free and fair elections, and that only the exercise of its imperial power by its hired officials, paid by the party in possession of the Government, can secure such results. Accordingly, Federal supervisors of elections were appointed with unlimited powers.

Mr. Chairman, all such Federal interference with State voters and their votes is wrong. It is founded in falsehood. It is unnecessary. It is inconsistent with the nature of our institutions, and violates the first principles of American liberty. I therefore desired that every section relating to supervisors should be repealed; but the policy adopted is to let the supervisors remain and repeal their most offensive powers. I believe that is a mistake; by conceding the existence of the supervisors we admit the principle of Federal interference with State elections. I want no half-way work on such a question, but it cannot be helped just now.

The powers of the supervisors now sought to be repealed are most oppressive and inquisitorial. These Federal officers are required to attend all places of registration, to cause such names to be registered as they think proper, to make the list of registered persons, to count and canvass every ballot and make returns thereof to the chief supervisor, with such statements as to the truth and fairness of the registry and of the election as they may see fit to make; they are aided by deputy marshals who have power to arrest without warrant anybody who in any way hinders or interferes with or attempts to hinder or interfere with the supervisors, and the chief supervisor has like power. It is easy to see the monstrous abuses to which such powers inevitably lead in the hands of partisan officials. It did not require the doings of Mr. Davenport in New York to prove the villainies resulting from such powers; such outrages as he committed are the natural and necessary consequences of such laws.

This chief supervisor, upon the astonishing pretense that all the certificates of naturalization issued in the supreme and superior courts of New York in 1868 were illegal, made complaints against ten thousand voters; hundreds of them he had arrested and prevented from voting on the charge that they had registered as voters on fraudulent papers; none of them were ever brought to trial, but warrants were issued against three thousand of them, and by means of those warrants and arrests and by threats he frightened and deluded three thousand naturalized citizens, ignorant of law, until they gave up to him their naturalization papers and abandoned their right to vote. His pretended objection to the papers was that the entries made by the clerks of the courts were not technical records; there was no validity in the objection, but it accomplished the object. Mr. Davenport prevented thousands of men from voting, not of his politics, and thereby defeated in the city of New York three Congressmen and several assemblymen. His own testimony before the committee of Congress reveals his object:

Question. What was your object in issuing the warrants?
Answer. My intention was to arrest the party and prevent his voting. I did not intend that persons who held those certificates should vote; if that is intimidation I plead guilty.

I have now said enough to show that the legislation in sections 2016, 2018, and from 2020 to 2027, both inclusive, of the Revised Statutes, is false in principle and fatal in its consequences, and beyond all question ought to be repealed.

The amendments proposed to sections 2017 and 2019 are limitations upon the power of the supervisors; they take away from these Federal officials the duty of challenging at State elections, and deprive them of all right to take part in counting or canvassing State ballots. These powers are open to the same objections as those given by the statutes sought to be repealed; they are parts of the same general scheme to put Federal officers in control of the local domestic concerns of the States, and are liable to all the difficulties I have already stated. All of our proposed legislation is therefore right in substance, and in place also. We have heard a great deal in this debate; we have been told that the bayonet is the basis of civil liberty, that in order to have a free election soldiers must manage it; we have been told that it is revolution to follow the rules of the House and republican examples; that we are seeking to starve the Government! These hardy assertions have received more reply than they deserved; the passage of this appropriation bill will starve nobody, if starvation follow by reason of action, or failure to act elsewhere, this House will not be responsible for it.

Legislative, etc., appropriation bill.

SPEECH OF HON. C. M. SHELLEY,

OF ALABAMA,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. SHELLEY. Mr. Chairman, this question is one of great general interest, because it relates to the constitutional powers of Congress over the rights of the citizen and has a direct bearing upon the relations of the States to the Federal Government. The discussion of a question of such gravity, involving interests of such magnitude and so intimately connected with the fundamental principles of our Government, is calculated to excite the deepest solicitude throughout the entire country among all lovers of free institutions. In view, therefore, of its magnitude and gravity it should be considered not in a spirit of partisanship, nor in a sectional spirit, but from the standpoint of an American citizen who loves his whole country and who has an earnest desire to promote the cause of human liberty. Impelled I trust by these patriotic motives, I shall undertake to deal with it in presenting my views to this committee. The great question involved in these amendments is the constitutional

POWERS OF CONGRESS OVER FEDERAL ELECTIONS.

In examining the fourth section of the first article of the Constitution, upon which the Federal election laws are based, we find the duties of the States in reference to the election of Senators and Representatives set forth in clear and simple language. It makes it the duty of the Legislatures in the several States to prescribe the times, places, and manner of holding these elections.

We also find in this same section the discretionary powers of Congress defined with equal clearness and force:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof.

This, Mr. Chairman, is no uncertain language. The framers of the Constitution evidently intended to impose this duty upon the States. But there was a possibility that some one or all of the States might fail to perform it, or perform it in such manner as to practically defeat the purpose of the Constitution, which was to preserve intact the organization of the Government by giving the citizens of each State the right and opportunity of being represented in Congress.

To protect the Government against such possible failure on the part of any or all of the States to prescribe these regulations the second clause of this section was added, which reads as follows:

But the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

It seems clear, therefore, that it was intended to leave this power primarily with the States, and that it is only when the States refuse or fail to exercise it that Congress can take jurisdiction of the matter. If this view of the Constitution is correct, and I submit that it is not susceptible of any other construction, and Congress can only make or alter these regulations when the States have failed to make them or when they have made such regulations as would practically defeat the purpose of the Constitution, let us examine and see if any excuse or pretext has been given by any of the States for the assumption of this power by Congress.

The object of such regulations is to provide for and protect the citizen in the exercise of his free choice of Representatives in Congress.

STATE LAWS AMPLE.

All of the States have laws and regulations for holding elections by which they have made ample provision for the protection of the voter, the correct ascertainment of the result of such election, and for the punishment of persons who violate those regulations, as the following synopsis will show:

In Alabama the secrecy of the ballot is fully protected. The sheriff of each county is required to have deputies at the different precincts in the county to protect voters and preserve the peace. A fair count is secured by the appointment of inspectors of different political opinions. The canvass of the votes, when returned to the board of county canvassers, is publicly made, and by members of different political parties.

In Arkansas the duties of the sheriff are the same as in Alabama. The canvass of the votes by inspectors of districts and by the clerk is publicly made and the result publicly announced. In California great care has been taken to protect the voter in all his rights and to secure a fair count. In ordering any election the governor offers a reward of $100 for the arrest and conviction of any and every one violating the election laws; voters are privileged from arrest in going to and returning from the polls, except for a breach of the peace or for an indictable offense. (This same provision, however, is found in the statutes of nearly all the States.) The tickets are uniform and printed on the same kind of paper, furnished by the secretary of state. The registration list is kept at each voting place, and when an elector votes the word "voted" is written opposite his name on the list. Registration is required in nearly all the States, and the laws governing the manner of registration, if followed, are sufficient to prevent fraud in this respect. The board of elections appointed by the board of supervisors of the county canvass the votes publicly, as does the board of supervisors of the county when the returns are made. I ask your attention to the following statutes of this State relating to frauds upon elections and the improper influencing of voters.

Every person who by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage; * * * or who, being inspector, judge, or clerk of any election, while acting as such induces or attempts to induce any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

The punishment for voting without being qualified, voting twice, any interference with ballots after being polled or while being counted, with intent to change the result of an election, or carrying away, or destroying, or attempting to carry away or destroy, any poll list or ballot or ballot-box for the purpose of breaking up or invalidating any election returns, or in any manner so interfering with officers holding an election or conducting an election, or with the voters lawfully exercising their rights of voting at such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

Every person willfully violating any of the election laws of the State, unless different punishment is prescribed, is punishable with a fine not to exceed $1,000, and with imprisonment not to exceed five years.

In New York the inspectors of election, elected by the people, have full power to maintain order at the polls and to direct the arrest of turbulent persons. Any person refusing to obey the order of inspect-

ors it is made the duty of sheriffs and constables to arrest. The canvass of the votes is made as soon as the poll is closed and the result publicly announced. If there are more votes in the ballot-box than there are names on the poll list, unless it is apparent that two votes have been voted by one person, (in which case both votes are thrown out,) a sufficient number are drawn out by lot to equalize the number of ballots with the poll list. The canvass by the board of supervisors of the county is fair and the result of the election publicly announced.

In Pennsylvania the laws governing elections are so complete and the details are so well defined that it would seem impossible to prevent a fair election in that State. The inspectors of election in each ward or district (except in the city of Philadelphia where the choice of election officers has been taken from the people and given to the board of aldermen) are elected as in New York, by the people. The registration list is placed on the door or on the house where the election is to be held thirty days before the day of election. No inspector is allowed to receive a ticket from any person other than an elector in the township, ward, or district for which the inspector is appointed. The word "voted" is to be stamped on all naturalization papers when a naturalized citizen has voted. On the petition of five or more citizens of any county that they believe frauds will be practiced at any election about to be held in any district, the court of common pleas or judge thereof appoints two citizens of different political parties when the inspectors are of different parties, but if they are of the same party then of the opposite party, who are called "overseers of election," who have power to be present during the election and count of the votes, to challenge voters, &c. It is made the duty of mayors of towns, sheriffs, deputy sheriffs, aldermen, justices of the peace, constables and their deputies, when called upon by any officer of election or by three qualified voters, to clear the way to the polls and to preserve the peace. The judge of election of each precinct after the count is completed announces publicly the result.

The judges of the several precincts of the county meet at the court-house on the third day after the election and canvass the returns, rejecting no return for informalities when the return can be understood. The manner of making returns and canvassing the vote for members of Congress is somewhat out of the usual way. After the judges of the precincts in each county have canvassed the vote of their county they select one of their number to meet the judges selected by the other counties in any congressional district to cast up the several county returns; which being done, one copy is filed with the prothonotary of the court of common pleas of the county where the meeting is held, one with the secretary of state, and one with the Representative-elect to Congress. In Wisconsin election officers have power to preserve order and to order constables to arrest disorderly persons. The manner of canvassing the vote is similar to the way it is done in Pennsylvania, except that the county clerk, county judge, register of deeds, members of the county board of supervisors, and justices of the peace form the board of county canvassers.

In South Carolina the governor appoints commissioners of election for each county, and they appoint supervisors or managers for the several precincts of a county. State constables are required to attend at all polls and preserve order, and see that the managers are not interfered with, and that voters are not intimidated or in any manner prevented from voting as they wish.

In Georgia the managers of election are sworn to make a just and true return of the election, and not permit any one to vote unless he is entitled to do so. They are authorized to employ a sufficient number of police, whose duty it is to guarantee all legal voters, irrespective of race or color, the free exercise of the right of franchise. The clerk of the superior court is required to deliver lists of the voters at any election to the grand jury at the next term of the court, and the grand jury is required to examine the lists, and if any voter is found thereon who is not entitled to vote, to present such illegal voter.

The punishment for making fraudulent returns or influencing electors improperly is severe. Electors are privileged from arrest for several days before and after an election, except for treason, felony, or breach of the peace. Without further citing in detail the provisions made by the several States, it is sufficient to say that the laws of every State make ample provision for the protection of the voter, for securing a fair count of the votes cast, and for the punishment of violations of the election laws, leaving no excuse for the interference of Congress.

Then, Mr. Chairman, unless such a state of things does or should exist as would, in this view of the question, authorize the interference of the Federal Government, the exercise of such power by Congress is, in my opinion,

A BALD USURPATION.

Its exercise in any event should be avoided if possible, for under any circumstances it is in the last degree dangerous to the liberties of the people, because it gives to the Administration which happens to be in power an undue if not a controlling influence upon elections, on the freedom of which rests the foundations of our republican institutions, while it tends greatly to magnify and increase the

POWER OF THE GOVERNMENT,

the effect of which is always to restrict and abridge the rights of the citizen.

Under these laws which we are seeking to repeal, the power of the Administration is felt in every voting precinct in the United States, and it is believed by many to be utterly impossible to have a free and fair election under such influence. Their enforcement is naturally committed to partisan officials who are always inspired by a patriotic desire to keep their party in power, and they never scruple to use their official positions to promote that end. It may be said that these same partisan influences will control officials appointed under the State laws. I answer that while that is true, their equilibrium is preserved in a national sense by the fact that while Maine is republican Alabama is democratic, and South Carolina may be democratic while California is republican. So that these partisan influences are neutralized by this wise distribution of power among the States. On the other hand, if Congress is to exercise these powers the same partisan influences will be felt in every State at the same time, and to some extent make its members the representatives of the Executive and not of the people.

With these views, Mr. Chairman, I am brought to the conclusion, first, that Congress has no authority under the Constitution to interfere primarily with matters of election; second, that if Congress has such power under the Constitution its exercise would be utterly destructive of free and fair elections.

I now come to another phase of this subject, which presents evils of equal if not greater magnitude than those already considered. These statutes not only operate to influence unduly the result of the election of Representatives in Congress, but they bring the whole power of the Administration to bear upon the

ELECTION OF STATE OFFICERS

when the election of those officers occurs at the same times and places, which is the case in most of the States, a power which Congress has no shadow of right to exercise. They go further and practically assume supervision of the election of electors of President and Vice-President, the control of which is left exclusively to the States by the Constitution.

Article 2, section 1, of the Constitution, which provides for the appointment of electors of President and Vice-President, is in the following words:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.

* * * * * * *

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

It will be seen that the "manner" of appointing electors is left entirely with the States, but Congress may determine the "time" of choosing them. Now, under this latter power Congress, by section 131 of the Revised Statutes, has determined that the time of appointment shall be on "the Tuesday next after the first Monday in November." By section 25 of the Revised Statutes Congress has established "the Tuesday next after the first Monday in November" as the day for the election of Representatives to Congress, so that the appointment of electors of President and Vice-President and the choosing of Representatives to Congress must take place in the several States upon the same day. The Legislatures of the States, without exception I believe, have directed that electors shall be appointed by the voters of the several States in the same manner that Representatives to Congress are chosen, so that the supervisors who "scrutinize, count, and canvass the ballots for Representatives in Congress" practically exercise the same power with respect to the ballots for electors.

It may be said, however, that this does not follow, as the States may by law provide separate ballot-boxes and require the voters for electors to vote separate tickets. That would not avoid the evil complained of, for the reason that while those Federal supervisors and United States marshals, clothed with the power which these statutes confer upon them, continue to parade themselves with their badges of authority at the voting places, their influence upon the voter will be felt, and will have its weight in bringing him to the support of the ticket of their party.

It is possible to escape this pernicious influence by having separate voting places and different officers of election provided by the several counties of the States, but this would entail upon the counties a large additional expense to which they should not be subjected. These immediate sections providing for supervisors, it is admitted, do not confer any authority for interfering with the election of electors of President and Vice-President, yet the purpose of Congress seems to have been, by providing that these elections should occur on the same day, to bring *this* election under their influence and thus accomplish indirectly that which they had no authority to do directly. This purpose is further shown by section 5520, which provides as follows:

If two or more persons in any State or Territory conspire to prevent by force, intimidation, or threat any citizen who is lawfully entitled to vote from giving his support or advocacy in a legal manner toward or in favor of the election of any lawfully qualified person in an election for President and Vice-President or as a member of Congress of the United States, or to injure any citizen in person or property on account of such support or advocacy, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment with or without hard labor not less than six months nor more than six years, or by both fine and imprisonment.

This statute, Mr. Chairman, and others of like character are to be enforced and executed by the district courts of the country, from

whose judgments the defendants have no right of appeal. Congress, as if fearing to let the light of judicial interpretation fall upon them, took from the Supreme Court the right to issue writs of *habeas corpus*, which was the only mode by which the question of their constitutionality could be brought before that tribunal, and to-day the life, liberty, and property of forty millions of people are under the control of the Federal district judges under statutes—the constitutionality of which is gravely questioned by many of the ablest jurists of the land.

GOVERNMENTS ABSORB AND CONSOLIDATE POWER.

Mr. Chairman, history shows us that there is a tendency on the part of all governments to absorb and consolidate power, and it is this dangerous inclination which has led to many of the greatest conflicts between the people and their rulers. To repress this tendency a steady and determined attitude on the part of the people is required. The encroachments of power in a republican government are stealthy. One by one the people are robbed of their liberties until those who govern assume supreme control. They should, therefore, earnestly resist the least abridgment of their rights and guard with jealous care the smallest of their liberties, for when these are tamely surrendered the power which absorbs them will demand more, and growing bolder with each successful attempt finally usurp despotic authority. The power now exercised by Federal officials in elections is similar to that used by the tools of Napoleon III in

THE PLEBESCITE OF 1852,

which was but a mockery in so far as it gave an expression of the will of the people of France, but a stern reality in so far as it showed the power of a sovereign to control the ballot-box; and although the appeal was made by means of universal suffrage, the tendency of the proceeding was to despotism.

Cæsar began as a moderate ruler, and was at first content with reasonable authority, but having tasted the sweets of additional power, conferred upon him by a people dazzled by his victories and over whom he had thrown the glamour of his military genius, he stripped them by degrees of all authority, and was only prevented from reducing them to absolute subjection by the knife of the assassin.

Cromwell first appeared as the defender of the liberties of Britain, and in that exalted role swept the haughty Stuart from his throne, and overthrew one of the proudest monarchies of earth. In its place rose a crude government resting after a fashion on the popular will. But when Cromwell became its head, he struck down with a mailed hand the liberties of his countrymen, absorbed their rights and privileges, and gathered together in his cabinet all the elements of supreme power.

Bonaparte having tasted the meats on which great Cæsar fed, finally drove Frenchmen from the banquet board and claimed a monopoly of the feast.

James the Second ascended the throne of his ancestors and swayed the scepter over a people ever jealous of their liberties. His government, by slow but sure degrees, absorbed the rights of the estates of the realm, and it was not until the aggressions became so bold and menacing that the people, alarmed, arose by a common impulse and regained the power they had lost.

Our own country, Mr. Chairman, has furnished a few instances of the encroachments of power worthy of remembrance by a liberty-loving people; when the bayonets of Federal soldiers, moving at the command of the Executive, expelled the Legislatures of sovereign States from their halls, that part of our history could be interwoven with the history of European dynasties and pass for a link in the chain of great wrongs which arbitrary rulers have inflicted upon a submissive people.

THIS IS NO SECTIONAL QUESTION.

Its range is too broad and its effects too general to be confined to any section. It addresses itself to every lover of his country all over the land, and I have been surprised at the effort to give its discussion a sectional character. Some gentlemen have even gone through the history of the war, invoking its memories to divert attention from the real issue. While I have no sympathy with the motive which prompted these gentlemen to pursue that course, I desire to say that the sad experiences of that terrible war kept fresh in our memories should aid us in subduing our passions and restrain us from acting rashly or unwisely in the discussion of questions so directly affecting the rights and liberties of the people. The great lessons gathered from the thousand battle-fields of that great conflict should be ever present with us to keep our feet in the paths of peace and fraternal union. Both sides should cherish these memories, not in a spirit of bitterness, nor with animosity, but with that feeling of respect and esteem which should animate all men who are capable of sacrificing life in support of their convictions.

Mr. Chairman, one by one representative southern men have taken seats on this floor, until the voice of the entire South is heard in behalf of peace, Union, and prosperity. We have returned to our places in this great Union not as captors of Congress, as some would have you believe, nor with any such purpose, but as servants of the people, inspired by a manly purpose to co-operate with our countrymen from all sections in securing prosperity and peace to our people and in promoting the progress of this great country toward that high destiny which can only be reached through the genius and energy of the American people.

We are here, Mr. Chairman, not to ask favors or to demand anything but even-handed justice. We are not here to parade the many outrageous wrongs which have been perpetrated upon our people under the forms of law in days that are past, but to call to the attention of the country the great present evils of existing law when its execution is intrusted to corrupt and partisan courts.

This great Government belongs to us as much as to the people of any other section of country. We have as much interest in protecting and preserving its life as the gentlemen who fought on the other side. Its existence and prosperity is as necessary to our advancement and general welfare as to any other class of the American citizens; and the democratic party of the South is to-day ready, in the pride and manhood of American citizenship, to shoulder arms and march to the field under the Stars and Stripes in defense of the Constitution as it stands with all its amendments.

The people of the South are as law-abiding and liberty-loving as the people of the North. Every legislative act of our people, whether in the Federal Legislature or in their State Legislatures, has tended to promote universal freedom and the common welfare of man.

The Origin and Growth of the Tribunician or Veto Power.

SPEECH OF HON. J. B. BELFORD,

OF COLORADO,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. BELFORD. Mr. Chairman, the year 259 of the Roman state was characterized by events whose influences have had a marked effect on the fortunes of the civilized world. Appius Claudius, a man thoroughly patrician in his tastes and haughty and overbearing in his demeanor, was consul, and had for his colleague Publius Servilius. The city was threatened with a war on the part of its ancient enemy, the Volscians, and the common people, who in times past had composed the conquering legions of Rome, were actuated by animosities against the patricians, who were proceeding to collect the debts due them from the commons by the application of the most rigorous methods.

Daily the spirit of discontent increased, and finally burst into a flame by reason of the extraordinary suffering of one who, having filled the office of centurion, showed himself in the forum. His appearance denoted distress; his garb was squalid, and his figure shocking, pale and emaciated to the last degree. To those who inquired the cause of his wretched condition, he replied that in the Sabine war he had been a valiant soldier; that he had bravely fought the battles of his country; and that, while he had been engaged in defending the public liberties, his land had been subjected to grievous taxation by the patricians and himself forced to incur debts; that these debts, aggravated by usury, had consumed, first, his farm, which he had inherited from his father, then the remainder of his substance, and lastly, like a pestilence, had reached his person; that he had been dragged by a creditor, not into servitude, but into a house of correction, or, rather, a place of execution. He then showed his back disfigured with stripes.

The tumult spread from the forum throughout the city. Those who were threatened with imprisonment and those who had been released assembled together and an insurrection took its start in the streets of the eternal city. Appius, prompted by his violent temper, advised that the riot should at once be quelled by an exertion of the consular authority; that the arrest of a few of the ringleaders and their subjection to immediate punishment would have the effect to stay, if not wholly subdue, the storm. Servilius, a better politician and a statesman of broader views, counseled compromise and conciliation. He felt that the only way to stop the public clamor was to redress the public wrongs. In the midst of this discussion a horseman arrived from the Sabine country conveying the intelligence that the Volscian army was on its way to attack the capital. The patricians were inspired with terror, the commons with joy.

In the face of the fears of the aristocrat and the exultations of the plebeian, the senate was almost paralyzed, but finally summoned courage enough to instruct Servilius to conciliate the regard of the people in order that he might find means to extricate the commonwealth from the apprehensions and dangers with which it was beset. From the senate chamber Servilius betook himself to the rostrum. He admonished the people that while the enemy were at the gates it would be impolitic for the senate to enter upon a great workof reform, and that it would be wrong for the commons to refuse to take up arms in defense of their country, unless on condition that their grievances should be first redressed; that at a more auspicious period their injuries should be considered. This speech had its effect, and that effect was enlarged by a decree, which provided that no person should hold any Roman citizen in bonds or confinement or make sale of the goods of a soldier while upon service. On the publication of this

edict the commons gave in their names to the consul, enrolled themselves in the army, marched out against the Volscians, and conquered them.

Rome, relieved from her perplexities and dangers and dominated by the senate and the aristocracy, concluded to ignore the promises of reform that had been made in the hour of her danger. Appius advocated that the debtors should again be imprisoned, that the will of the commons should be crushed, and that the senate and aristocracy should be strengthened in their privileges. Servilius tried to curry favor with both sides, and earned the contempt of all. The people having given up all hope of protection from the consuls and the senate, applied their own remedies. When they saw a debtor led to court they flew together from all quarters and raised such a tumult that the sentence of the consul could not be heard. Thus matters stood until Aulus Virginius and Titus Vestusius were elected consuls in the year 260. Then the people, bent on redress, held nightly meetings, some on the Esquiline and others on the Aventine Mount.

These meetings were brought to the attention of the senate, which led to a great tumult in that body, the senators seeking to escape responsibility by placing it on the shoulders of the consuls. I will not recount the battles fought and the victories gained by the common people pending their negotiations with the senate. It is sufficient to say that their grievances were unredressed; that the senate was obstinate, the aristocracy defiant, and that the commons were finally driven into revolt. The commons retired to the sacred mount beyond the river Anio, three miles from the city, where they fortified their camp with ramparts and trench. This movement on the part of the people filled the senate with the gravest apprehensions. What would happen if a foreign enemy should attack the sacred city while the legions were discontented and mutinous?

It was decreed that an ambassador should be sent to treat with those in revolt. Menenius Agrippa, a man of eloquence and acceptable to the commons, was intrusted with this mission because he had been originally one of their body. The world will never forget the speech he made. The result was that negotiations were opened, a reconciliation effected on the terms that the plebeians should have magistrates of their own, invested with inviolable privileges, who might have power to afford them protection, and that it should not be lawful for any of the patricians to hold that office.

This treaty declared that any person who violated the privileges or person of the plebeian tribune should be devoted to Ceres, and any one might put him to death with impunity. These tribunes at their institution had limited powers; they sat on a bench without the senate, into which they were not admitted except when the consuls required their presence to give their opinion on some measure affecting the interests of the common people. Their sole function was to protect the people against any and all grievances sought to be imposed on them by their superiors, and their power extended no farther than one mile around the city. Such in brief is the history of the origin of the tribunes, whose veto power exerted such an immense influence on the history of Roman legislation.

The tribunician order was thus the outgrowth of a bitter struggle waged for years between those who held the powers of state and desired to monopolize all its privileges, and the common people, who had borne the burdens of numerous wars, who had felt the load of increasing taxation, and who yet received no protection from those for whose benefit they had so nobly struggled. It was a concession wrung by fear from a senate wholly composed of patricians, and a concession, too, which was only preserved by great efforts put forth by those to whom it had been made; a concession which was destined to be questioned for years afterward by those who granted it.

For we are informed that in the year 262, when a famine prevailed in Rome and corn was brought in from Etruria and Sicily, it was debated in the senate at what price it should be given the commons, and in that debate it was asserted by many, notably by Marcius Coriolanus, that the time had come to humble the commons and to recover those rights which had been extorted from the patricians. Marcius Coriolanus declared:

> If they wish to have provisions at the usual price, let them return to the patricians their former rights.

Happily these counsels did not prevail; the provisions were granted, and Coriolanus went into exile. Like all human institutions intrusted with power, the tribunician order enlarged its scope. Although originally designed to protect the people against the governing class, their officers were invoked to arbitrate and settle difficulties which perplexed the tribes from which they sprang. They became public guardians, and everybody by night or day had access to their houses. Soaring above the influence of the consuls, they convoked the senate and presented subjects for its discussion. They demanded of the consuls that they request the senate to make a *senatus consultum* for the appointment of persons to form a new legislature, and were present when the senate discussed it. If a haughty patrician violated the rights of the humblest citizen, they brought him to trial before the comitia of the tribes. From one step they proceeded to another until they obtained the right of intercession against any action which a magistrate might perform, and were required to give no reason for their conduct. They could not only order the consul to convoke the senate but restrain him from convoking it, and also prevent the proposition of new laws and the holding of elections.

If a law were objectionable or hastily passed they could place their veto upon it and either compel the senate to submit the subject to fresh consideration or to raise the session. While the senate was thus subject to them it did not disdain the use of their influence on the consuls if the public exigencies required the appointment of a dictator. If the consuls exhibited indifference to the decrees of the senate the tribunes compelled them to comply. The tribune, originally the child of the commons and the master of the senate, finally became one of its members by virtue of his office. Not content with the power to arrest the proceedings of the magistrates, they enjoyed that of compelling them to act, and any default could be visited by penalties, including that of being hurled from the Tarpean rock. They could not only control magistrates but submit to the tribes questions concerning peace with foreign nations and compel the senate to execute the will of the people.

Sulla, in his reforms, trimmed down their rights, but Pompey restored them. From the year 491 B. C. until five hundred years after the advent of our era they existed, and no man can measure the extent of their influence in shaping the destiny of a people whom the world regarded as its conquerors. Our institutions, however, having been patterned in a great measure after those of England, I have deemed it sufficient to allude to the origin of the veto power in Rome, without furnishing any special instances of its application. For many centuries after the accession of William the Conqueror to the British throne the boundaries which determined the sovereign's privileges and the people's liberty or power were but poorly defined. During the reign of William and for many years afterward the supreme legislative power of England was lodged in the King and his great council, composed of barons, archbishops, bishops, and abbots. The common people had nothing to do with this council. It was sufficient for them to pay what taxes were levied and to fight in the wars that were waged.

Indeed, in those early times men regarded a participation in legislative assemblies as a burden to be escaped rather than a right or a privilege to be enjoyed. They felt that neither the profit nor honor to be gained was proportionate to the trouble and expense incurred. The only protection which they aspired to was against their fellow-citizens, and this protection they sought for in the courts of justice or at the hands of their feudal lords. The House of Commons sprung into existence as much from the conviction of the monarch that an independent people such as the English could not be governed without their consent as from the wish of the people to be secure against the exercise of arbitrary power. The monarch was master not only of the executive but also of the judicial power, for the appointment of all judicial officers was in his hands. If the monarch would observe the great charter the people were content; if he failed they enforced obedience by withholding supplies

During the reigns of the Plantagenets and Tudors the common people were an insignificant factor in the problem of government, and from the time of Henry the Third down to that of Elizabeth, and, indeed, throughout the great part of her reign, it was not necessary for the monarch to stay the enactment of any law, because he determined what laws should be introduced, and interfered at the very first stages of legislation and arrested it if disagreeable to him. Why exercise the veto if an intimation to the speaker would prevent the reading of a bill? Why veto a measure if Parliament could be prorogued while considering it? In the year 1539 Parliament made a complete surrender of its liberties to Henry the Eighth by declaring that the proclamations issued by him should have the effect of laws and be perpetual in their character.

True, in the reign of Edward VI, this law was repealed, but Somerset, the protector, governed by proclamations, and Edward employed his dispensing power in setting aside the statute of precedency enacted during a former reign. In Elizabeth's time, a period regarded as glorious, Parliament was simply a servile tool in the hand of the Queen. In the Parliament held in 1571, a member seeking to redress certain abuses before the granting of a subsidy was informed by the speaker of a message from the Queen "to spend little time on motions and make no long speeches." When the Puritans in Parliament desired to correct the abuses existing in the government of the church, and sent a messenger to the Queen informing her that a bill looking to that end had been introduced, the Queen restrained the messenger from returning and the bill was dropped.

In 1572, when the Commons were desirous of absolutely excluding Mary of Scots from inheriting the crown, and even taking away her life, Elizabeth through one of her ministers informed them that she would neither have the Queen of Scots enabled or disabled to succeed, and any bill on the subject must be framed by her council. So, also, she informed them through the speaker that no bills concerning religion should be received unless they should first be considered and approved by the clergy; and she demanded to see certain bills which had been introduced. The bills were accordingly ordered to be delivered, accompanied by an humble apology.

Again, in 1581 the chancellor on confirming a new speaker admonished him that the House of Commons should not intermeddle in anything touching Her Majesty's person, estate, or church government. In 1575 Wentworth was sent to the tower for protesting against the Queen's interference with legislation then pending in the Commons; and who has forgotten the fate of the five questions which he propounded to the Commons touching the right of a member to utter by bill or speech "any of the griefs of this commonwealth?" Numer-

ons other instances might be cited from the history of those times of queenly interference with both Lords and Commons. Those above given, however, will show the powers claimed and exercised by the Tudors over legislation.

The Stuarts mounted the English throne with the most unlimited notions of the royal prerogative. They asserted not only a right to control its legislation, but also to determine the character and qualifications of the members of the House of Commons. James was a firm believer in the divine rights of kings, and declared that the existence of Parliament was a matter of privilege and not a constitutional right. He hesitated not to deliver to the Commons lectures on the kind of legislation they should adopt, and he freely criticised the provisions of certain bills then pending. He claimed the right to declare war and conclude peace without the intervention of Parliament. He levied and collected taxes and imposts on the merchants and resented the interference of the Commons. Instead of vetoing laws he undertook to rule the country by proclamations. Some of these proclamations altered certain existing laws, while others announced new ones, the offshoots of the royal breast. Of course there were frequent protests on the part of Parliament, and some compromises dangerous to liberty made, but the monarch sped on in his lawless career. Wearied of Parliament, he dissolved it and sought to rule alone. Failing in this, he again resorted to Parliament in order to secure supplies, and the Commons refusing supplies unless their grievances were redressed, he again dissolved it.

If the Commons protested he sent for the journal and erased the protest with his own hand. The last two parliaments held during his reign were dissolved without passing a single act except a subsidy one. The acts of the first Stuart were repeated by his son, and when bills were rendered to him for that assent which it had been necessary for the last two centuries to secure to give validity to a law, if he signed it it was with the protest that his prerogative was supreme. In Hampden's case the truculent judges of Charles had declared that the right of the King to tax was so inherent in the royal office that no act of Parliament could take it away. The revolution of 1640 imposed vigorous restrictions on the royal prerogative and established the English constitution such nearly as it exists now. It readjusted the shifting balance of political power and made executive domination over Parliament impossible. In the remonstrance made by the Commons to Charles, in 1641, it was claimed that on a right construction of the old coronation oath the King was bound to assent to all bills which the two houses of Parliament should offer, and this claim in the remonstrance was sustained on a division by a vote of 103 to 61, but Mr. Hallam states that this claim was repugnant to the whole history of English laws, and incompatible with the subsistence of the monarchy in anything more than a nominal pre-eminence.

After the death of Charles the republican party in the Commons voted that the people, under God, are the origin of all just power; and that whatever was enacted by the Commons in Parliament hath the force of law, although the consent and concurrence of the King be not had thereto.

When Cromwell assumed the reins of government, with the title of protector, the sovereignty still resided in Parliament; he had no negative voice on their laws. In the first Parliament which assembled after his accession to supreme power the members undertook to discuss the extent of his authority, and he dissolved that body with strong marks of his disfavor. From the next one he excluded ninety members who had been duly returned by their constituents. The instrument known as the petition and advice presented by Parliament to Cromwell, in May, 1657, did not mention the veto power, but it was taken for granted that no act could be valid without his assent. In the first Parliament assembled by Richard Cromwell, the negative voice of the lord protector in passing bills was discussed, but no definite resolution seems to have been reached thereon.

In the second Parliament under Charles II it was declared that there was no legislative power in either or both houses without the King. In 1679, when the bill looking to the exclusion of the Duke of York from the throne was pending in Parliament, in addition to the offers made by Charles, and which contemplated a solution of the difficulties which embarrassed the houses, it was proposed that the duke, in case of accession, should have no negative voice on bills. In the declaration of rights presented to William III by Halifax, as speaker of the House of Lords and in the presence of both houses, it was declared that the pretended power of suspending laws and that the dispensing with laws by regal authority as it had been assumed and exercised by the Stuarts was illegal. During the reign of this prince Parliament, in 1693, passed a bill concerning the holding of triennial Parliaments. The King refused his assent. The Commons determined to disapprove of His Majesty's conduct. The House formed itself into a committee to take the state of the kingdom into consideration. They resolved that whoever advised the King to refuse the royal assent to that bill was an enemy to their majesties and to the kingdom. They likewise presented an address expressing their concern that he had not given his consent to the bill and beseeched His Majesty to hearken for the future to the advice of Parliament rather than to the council of particular persons who might have private interests of their own separate from those of His Majesty and his people. The King thanked them for their zeal, expressed his warm regard for the constitution, and assured them he would look upon all parties as enemies who should endeavor to lessen the confidence between the sovereign and the people. The members were not satisfied with the reply. A day was appointed to take it into consideration; a warm debate ensued; at length the question being put that an address should be made for a more explicit answer, it was passed in the negative by a large majority. We meet with but one other veto from that day to this in English history, and that in the reign of Anne. Since 1707 any interference on the part of the Crown with the legislation pending before Parliament has been resented in unmistakable terms. One of the most brilliant speeches ever delivered by that great orator, Charles James Fox, originated in an attempt of the King to influence legislation.

On the 18th of November, 1783, Mr. Fox introduced his East India bill. It passed the Commons by a vote of 217 to 103, but when it reached the House of Lords it encountered a powerful and unexpected opposition. Earl Temple, a near relative of Mr. Pitt, had an audience with the King, in which the monarch stated "that whoever voted for the India bill were not only not his friends but that he should consider them his enemies." The statement was quietly circulated among the peers, and produced a profound effect. Peers who had previously declared in favor of the measure now announced themselves against it. The Duke of Portland alluded to these rumors. Lord Temple admitted the interview, but would say nothing further.

The Lords rejected the bill by a vote of 95 to 76. While the bill was pending in the House of Lords, Mr. Baker moved the following resolution in the Commons:

> That it is now necessary to declare that to report any opinion or pretended opinion of His Majesty upon any bill or other proceeding depending in either house of Parliament is a high crime and misdemeanor derogatory to the honor of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the constitution of this country.

He proved from the journals that—

> Any reference to the opinions of the King touching a bill before either house had always been judged a high breach of the privileges of Parliament.

The motion was seconded by Lord Maitland and strenuously opposed by Pitt; but was carried by a majority of 73.

Fox was most bitter in his denunciations. He declared that the conduct of the King robbed Parliament of its rights, and that the royal conduct was a menace of immediate destruction. "From this moment," he exclaimed, "farewell to every independent measure." Since the settlement made with William the Third there has been but little occasion for the exercise of the veto. This settlement established a cabinet responsible to the Commons. The ministry can be ousted whenever they are not in accord with the popular sentiment as expressed by a majority in the house. If they introduce any legislation obnoxious to the majority of the Commons and the people, a vote of want of confidence arrests them or forces them to appeal to the people. Before passing to a consideration of the veto power in this country it may not be amiss to refer briefly to its existence in other European countries.

In Norway the King has a veto, but if three successive strothings pass the same measure it becomes a law in spite of the veto. In Sweden and the Netherlands the King has an absolute veto.

The government of France prior to the revolution was little else than an absolute despotism. "The Kings of France," says Mr. Hallam, "forced their ordinances down the throats of the Parliament of Paris with all the violence of military usurpers. No law in France had ever received the consent of the people's representatives." When the revolution came, and Louis XVI refused to sign the decree against the emigrants which doomed to death every man, woman, and child who sought safety in flight, and also the decree which doomed to death the ministers of religion who could not take the oath prescribed by the Assembly, the canaille of Saint Antoine and Marceau saluted the King as Monsieur Veto, the queen as Madame Veto, and the dauphin as the Little Veto. Indeed, when Marie Antoinette was cowering for protection in the room of the National Assembly, the howling crowd outside sung the song whose horrible burden was:

> Madame Veto avait promis
> De faire égorger tout Paris.

At the beginning of the French revolution the National Assembly in forming the constitution allowed a conditional veto only, but it was made absolute after the Bourbons were restored.

By the constitution of the French Republic of 1795 the executive power was lodged in a directory consisting of five members, nominated by the legislative body. This directory was charged with the promulgation and execution of the laws but enjoyed no veto power. The constitution of 1799 confided the executive power to three consuls whose official tenure was limited to ten years. Bonaparte, as first consul, had exclusive power to promulgate the laws and to nominate all officers, whether military, executive, or judicial. No act of the government took effect until signed by a minister. It required that every act of the Legislative Assembly should be promulgated by the first consul on the tenth day after its passage except when referred to the senate by reason of its constitutionality being questioned. The senate consisted of twenty-four members and had the power to review all acts and maintain on annul the same.

With all the examples of history before them, our fathers dealt expressly with this veto power; and I invite the attention of the House to what they did and what they said, and also to the interpre-

tation and use of this power by the various Presidents from Washington down.

The Constitution of the United States provides that every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the Senate and House of Representatives according to the rules and limitations prescribed in case of a bill. Again:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law.

It will be observed that the Constitution thus refers to all bills, orders, and resolutions of every character, and declares that before they become effective they must be presented to the President for his approval. They cannot have effect without this approval except in one way, namely, by a two-thirds vote in the House and Senate. Thus applying to all bills that Congress may pass, how can it be said that the veto power only searches out the unconstitutionality of an order or a bill? Is not this a pretense born of partisan necessities? The original resolution out of which this section of the Constitution grew was in the following words:

Resolved, That the National Executive shall have a right to negative any legislative act, which shall not be afterward passed unless by two-third parts of each branch of the National Legislature.

In the draft of the Constitution reported to the convention August 6, 1787, the section read as follows:

Every bill which shall have passed the House of Representatives and the Senate shall before it becomes a law be presented to the President of the United States for his revision. If upon such revision he approve it, he shall signify his approbation by signing it; but if upon such revision it shall appear to him improper for being passed into a law, he shall return it together with his objections against it to that House in which it shall have originated, &c.

On the 15th of August, 1787, when this section came up for consideration, Mr. Madison offered an amendment providing—

That every bill before it become a law shall be presented to the President of the United States and to the judges of the Supreme Court for the revision of each.

But this amendment was voted down. Afterward, the section as reported by the committee was approved. Luther Martin, in his celebrated speech before the convention, used the following language in reference to this section of the Constitution:

There were also objections to that part of this section which relates to the negative of the President. There were some who thought no good reason could be assigned for giving the President a negative of any kind. Upon the principle of a check to the proceedings of the Legislature it was said to be unnecessary; that the two branches having a control over each other's proceedings, and the Senate being composed of members from the different State Legislatures, and being composed of members from the different States, there would always be a sufficient guard against measures being hastily or rashly adopted; that the President was not likely to have more wisdom or integrity than the Senators, or any of them, or to better know or consult the interests of the States than any member of the Senate, so as to be entitled to a negative on that principle. And it was further urged, even if he was allowed a negative, it ought not to be of great extent as that given by the system, since his single voice is to countervail the whole of either branch and any number less than two-thirds of the other. However, a majority of the convention was of a different opinion, and adopted it as it now makes a part of the system.

Mr. Iredell, in the convention in North Carolina, said:

After a bill is passed by both Houses it is to be shown to the President. Within a certain time he is to return it. If he disapproves of it, he is to state his objections in writing; and it depends on Congress afterward to say whether it shall be a law or not. Now, sir, I humbly apprehend that whether a law passes by a bare majority or by two-thirds, which are required to concur after he shall have stated his objections, what gives active operation to it is the will of Senators and Representatives. The President has no power of legislation. If he does not object, the law passes by a bare majority; and if he objects, it passes by two-thirds. His power extends only to cause it to be reconsidered, which secures a great probability of its being good.

Mr. Benton in 1832, when discussing the veto of the bank bill, said:

Under our Constitution its only effect is to refer a measure to the people for their consideration and to stay its execution until the people could pass upon it and adopt or reject it at an ensuing Congress. It was a power eminently just and proper in a representative government, and intended for the benefit of the whole people, and therefore placed in the hands of a magistrate elected by the whole.

Mr. Tyler, in his message vetoing the United States Bank, said:

The veto power is the great conservative principle of our government, without the exercise of which a mere majority might urge the government in its legislation beyond the limits fixed by its framers.

President Polk on three occasions during his administration, having occasion to exercise the veto power, took up the subject in his fourth annual message, and treated it at great length and with conspicuous ability. In this message he affirmed it to be the highest duty of the President to protect the country against hasty and inconsiderate legislation; that in deciding upon any bill presented to him he must exercise his best judgment; that the only effect of withholding approval of a bill passed by Congress is to suffer the existing laws to remain unchanged, and the delay occasioned is only that required to enable the States and the people to consider and act upon the subject in the election of public agents who will carry out their wishes and instructions. Said he:

Any attempt to coerce the President to yield his sanction to measures which he cannot approve would be a violation of the spirit of the Constitution, palpable and flagrant; and if successful would break down the independence of the executive department, and make the President, elected by the people and clothed with the power to defend their rights, the mere instrument of a majority of Congress. A surrender on his part of the powers with which the Constitution has invested his office, would effect a permanent alteration of that instrument, without resorting to the prescribed process of amendment.

He held that it was a power designed by the framers of the Constitution to protect the small States against the great ones. Again, he says:

One great object of the Constitution in conferring upon the President a qualified negative upon the legislation of Congress was to protect minorities from injustice and oppression by majorities. The equality of their representation in the Senate and the veto power of the President are the constitutional guarantees which the smaller States have that their rights will be respected. Without these guarantees all their interests would be at the mercy of majorities in Congress representing the larger States. To the smaller and weaker States, therefore, the preservation of this power and its exercise upon proper occasions demanding it is of vital importance. To charge that its exercise unduly controls the legislative will is to complain of the Constitution itself.

Again, he says:

A bill might be passed by Congress against the will of the whole people of a particular State and against the votes of its Senators and all its Representatives. If he surrender this power, or fail to exercise it in a case where he cannot approve, it would make his formal approval a mere mockery, and would be itself a violation of the Constitution, and the dissenting State would become bound by a law which had not been passed according to the sanction of the Constitution.

Again he says:

The objection to the exercise of the veto power is founded upon an idea respecting the popular will, which if carried out would annihilate State sovereignty and substitute for the present Federal Government a consolidation directed by a supposed numerical majority.

The occasion of this elaborate argument of Mr. Polk was the doubt expressed by many in 1848 as to the propriety of exercising this veto power. I especially commend this message to the gentlemen of today who are engaged in coercive legislation, and also that of Mr. Pierce vetoing the French spoliation bill in 1855. In 1834, when the Senate passed a resolution censuring General Jackson for his conduct in reference to the public revenue, that heroic democrat sent to the Senate a most formidable protest, fragrant with the very spirit of the Tudors and Stuarts. He declared in this protest that the passage of this resolution was wholly unauthorized by the Constitution and in derogation of its entire spirit.

This protest provoked a great discussion, in which Webster, Clay, Calhoun, Benton, and others participated. Mr. Poindexter denounced this protest as a breach of the privileges of the Senate and unfit to be received by that body; he thereupon moved that the protest be not received. The resolution of Mr. Poindexter, after undergoing certain modifications, was carried by a majority of twenty-seven. Thus the Senate declared such a paper as sent in by Jackson a breach of its privileges. That body claimed that it did not reach up to the dignity of an executive message, and that it was such a communication as the President had no power to send and that the Senate could not receive. Mr. Webster assailed this protest in a most elaborate speech and declared that "*it was a paper not called for by the exercise of any official duty;*" that it smacked of the very spirit of Louis XIV and Napoleon I when each declared "I am the State."

The resolution adopted by the Senate was afterward expunged, and no democrat ever questioned the right of Jackson to send the protest.

From the beginning of the Government to this time ninety-six vetoes have been sent to Congress, as will be seen from the subjoined table:

Vetoes.

WASHINGTON.

Date.	Legislation.	Reasons assigned.	Result.
April 5, 1792	Apportionment of members.	Impracticable.	Not passed.
Feb. 28, 1797	Reduction of the Army..	Injudicious and unjust.	Not passed.

MADISON.

Feb. 21, 1811	Incorporating church in Alexandria.	Violates Constitution.	Not passed.
Feb. 28, 1811	Incorporating church in Mississippi.	Violates Constitution.	Not passed,
April 3, 1812	District courts trials...	Bad precedent, vicious.	Not passed.
Nov. 6, 1812	Naturalization privileges.	Liable to abuse by aliens..	Pocket veto.
Jan. 30, 1815	Establishing United States Bank.	Does not meet public requirements.	Not passed.
Mar. 3, 1817	Internal improvements..	Unconstitutional.	Not passed.

MONROE.

May 4, 1822	Cumberland road aid ...	Unconstitutional.	Not passed.

JACKSON.

May 27, 1830	Maysville road.....	Unequal distribution of Government aid.	Not passed.
May 29, 1830	Washington turnpike...	Unequal grant of Government aid.	Not passed.
Dec. 7, 1830	Light-house appropriation.	Too liberal	Pocket veto.

Vetoes—Continued.

JACKSON—Continued.

Date.	Legislation.	Reasons assigned.	Result.
Dec. 7, 1830	Louisville and Portland Canal.	Private corporation	Pocket veto.
July 10, 1832	Bank of United States, modifying charter.	Discriminates and unwise.	Not passed.
Dec. 6, 1832	Interest to States	Improper precedent in allowance of interest.	Pocket veto.
Dec. 6, 1832	Harbor and river appropriation.	Government control of internal improvements.	Pocket veto.
Dec. 4, 1833	Clay's land bill	Unjust discrimination and distribution.	Pocket veto.
Dec. 2, 1834	Wabash River aid	Unjust distribution of Government funds.	Pocket veto.
June 9, 1836	Time of meeting and adjournment of Congress.	Conflicting with Constitution.	Not passed.
Mar. 3, 1837	Funds received for United States revenue.	Complex and uncertain	Pocket veto.

TYLER.

Aug. 16, 1841	Fiscal Bank of United States.	Unconstitutional	Not passed.
Sept. 9, 1841	Fiscal Corporation of United States, second bill.	Unconstitutional and inexpedient.	Not passed.
June 29, 1842	First tariff bill	Suspends compromise tariff act.	Not passed.
Aug. 9, 1842	Second tariff bill	Provides distribution public lands.	Not passed.
Dec. 14, 1842	Repeal section 6 public land bill.	Provides distribution public lands.	Pocket veto.
Dec. 14, 1842	Regulating contested elections.	No time for consideration.	Pocket veto.
Dec. 18, 1843	Payment awards to Cherokee Indians.	Loose methods of payment.	Pocket veto.
June 11, 1844	Eastern harbor appropriation.	Too general	Not passed.
Feb. 20, 1845	Revenue-cutter bill	Interferes with existing contract.	Passed.

POLK.

Aug. 3, 1846	River and harbor appropriation.	Too general and liberal, there being no pressing necessity.	Not passed.
Aug. 8, 1846	French spoliation claims	Contemporaries did nothing.	Not passed.
Dec. 15, 1847	Internal improvement	Interference with State rights.	Pocket veto.

PIERCE.

May 3, 1854	Aid to indigent insane	Improvident and unconstitutional.	Not passed.
Aug. 4, 1854	River and harbor appropriation.	Too general in character	Not passed.
Feb. 17, 1855	French spoliation claims	Amount, nature, and time transpired.	Not passed.
Mar. 3, 1855	Ocean mail appropriation.	Favors contractors against the United States.	Not passed.
May 19, 1856	Removing obstructions in Mississippi River.	Internal improvements by General Government.	Passed.
May 19, 1856	Channel over Saint Clair Flats.	Internal improvements by General Government.	Passed.
May 22, 1856	Channel over flats in Saint Mary's River.	Internal improvements by General Government.	Passed.
Aug. 11, 1856	Des Moines Rapids, in Mississippi River.	Internal improvements by General Government.	Passed.
Aug. 14, 1856	Patapsco River, port of Baltimore.	Internal improvements by General Government.	Not passed.

BUCHANAN.

Feb. 24, 1859	Aid to agricultural colleges.	Inexpedient and unconstitutional.	Not passed.
Jan. 7, 1859	Mail from Saint Joseph to Placerville.	Contractors would do for less.	Pocket veto.
Jan. 22, 1860	Homestead bill	Unequal, unjust, and inexpedient.	Not passed.
Jan. 25, 1861	Relief of Hockaday & Leggit.	Conflicts with rights of Postmaster-General.	Pocket veto.

LINCOLN.

Jan. 5, 1865	Joint resolution to correct clerical errors in revenue act.	In order that all errors may be included.	Not passed.

JOHNSON.

Mar. 27, 1866	Granting civil rights	Unconstitutional and unwise.	Passed.
Feb. 19, 1866	Freedmen's Bureau	Not consistent with welfare of the country.	Passed.
May 15, 1866	Admission of Colorado	Unconstitutional; no necessity.	Not passed.
June 15, 1866	New York and Montana Iron Mining and Manufacturing Company.	Benefit private corporation.	Not passed.

Vetoes—Continued.

JOHNSON—Continued.

Date.	Legislation.	Reasons assigned.	Result.
July 15, 1866	Montana surveying district.	Benefit of private corporations.	Passed.
July 16, 1866	Freedmen's Bureau continuing in force.	Not consistent with welfare of country.	Passed.
Jan. 5, 1867	Suffrage in District of Columbia.	Being unprepared; degrades the trust.	Passed.
Jan. 29, 1867	Admission of Nebraska	Incompatible with public interests.	Passed.
Mar. 2, 1867	Government of the rebel States.	Establishes military rule; unconstitutional.	Passed.
Mar. 26, 1867	Regulating tenure of civil offices.	Unconstitutional.	Passed.
Mar. 23, 1867	Supplemental to reconstruction act.	Strengthens military rule.	Passed.
July 19, 1867	Supplemental to reconstruction act.	Strengthens military rule.	Passed.
July 19, 1867	To carry into effect reconstruction.	Gives military unlimited power.	Passed.
Mar. 25, 1868	Amending judiciary act	Unconstitutional.	Passed.
June 20, 1868	Admitting Arkansas	Supersedes mode prescribed by Constitution.	Passed.
June 25, 1868	Admission of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida.	Supersedes mode prescribed by Constitution.	Passed.
July 20, 1868	Excluding electoral votes of rebel States.	Implied previous erroneous views.	Passed.
July 25, 1868	Freedmen's Bureau discontinued.	Interference with executive right.	Passed.
Feb. 13, 1869	Colored schools, Washington and Georgetown.	Contrary to wishes colored people.	Not passed.
Feb. 22, 1869	Copper tariff	Discriminates against other industries.	Passed.

GRANT.

Jan. 11, 1870	Relief of Rollin White	Reasons by Chief of Ordnance.	Not passed.
Jan. 4, 1871	Relief of Charles Cooper and others.	Discriminates against Government.	Not passed.
Mar. 28, 1872	Relief of Dr. John F. Hanks.	Erroneous premises	Passed.
April 1, 1872	Relief of James T. Johnson.	Further consideration	Not passed.
April 10, 1872	Relief of children of John M. Baker.	Passed on erroneous premises.	Not passed.
Jan. 6, 1873	Relief of Edmund Jussen.	Ineffective	Not passed.
Jan. 22, 1873	Reducing life of Court of Claims.	Justice can now be done	Not passed.
Feb. 8, 1873	Relief of James A. McCullah.	Non-performance of duty.	Not passed.
April 10, 1874	Relief of William Denniston.	Reasons by Secretary of War.	Not passed.
April 22, 1874	Inflating the currency	Inoperative	Not passed.
May 12, 1874	Relief of Joab Spencer and James R. Mead.	Insufficient amount	Not passed.
Jan. 30, 1875	Relief of Alexander Burtsh.	Reasons by Secretary of War.	Not passed.
Feb. 3, 1876	Indian trust funds	Reasons by Secretary of the Interior.	
May 26, 1876	Conveyancing in District of Columbia.	Reasons by Adjutant-General.	
July 11, 1876	Relief of Nelson Tiffany.	Reasons by Secretary of War.	Passed.
July 13, 1876	Relief of Eliza Jane Blumer.	Reasons by Secretary of the Interior.	
July 20, 1876	Amend sections 3496, 3951, and 3954, Revised Statutes.	Reasons by Postmaster-General—failure of object.	
Aug. 14, 1876	Restoring Captain Ed. S. Meyer to the Army.	Reasons by Secretary of War.	
Aug. 15, 1876	Repairing Pennsylvania avenue.	No date for fulfillment of contract.	
Jan. 15, 1876	Proof in homestead entries.	Reasons by Secretary of the Interior.	
Jan. 15, 1877	Supply blankets to Reform School.	No funds for purchase.	
Jan. 23, 1877	Police, District of Columbia.	Duties should devolve upon commissioners.	Not passed.
Jan. 26, 1877	Congratulations from Argentine Republic.	Infringes upon rights of Executive.	
Jan. 26, 1877	Congratulations from Republic of Pretoria.	Infringes upon rights of Executive.	
Feb. 14, 1877	Relief of Alfred Rowland.	Reasons by Secretary of War.	Not passed.
Feb. 14, 1877	Perfecting revision of Revised Statutes.	Neither fair nor useful	Not passed.
Jan. 26, 1877	Relief of Daniel N. Kelley.	Reasons by Secretary of War.	Not passed.

HAYES.

Feb. 28, 1878	Standard silver dollar	Impairs public credit	Passed.
Mar. 6, 1878	Special term of circuit court in Mississippi.	Cannot be done in time	Not passed.
Mar. 1, 1879	Restricting Chinese immigration.	Violates treaty obligations.	Not passed.

No man can examine these various vetoes and doubt for a moment that all our Presidents entertained the most liberal notions as exer-extent of the power, and not one of them ever shrank from itsto the cise when in his judgment the public welfare required Congress to halt and reconsider its action. The President as truly holds in his hands the scales by which the merit of legislation is to be determined as the legendary goddess holds in her hands the scales by which justice is meted out to suitors. It was not designed by our fathers that Congress should become the master of the country. They knew and Jefferson declared that the tyranny that would ingulf the liberties of the people would grow out of the intemperate and lawless partisan zeal of the legislative branch of the Government, and he so informed Madison. I cannot close my speech in a better way than by citing the following words written by his pen:

All the powers of government, legislative, executive, and judicial, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not a single one. One hundred and seventy three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the power of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by others. For this reason that convention which passed the ordinance of government laid its foundation on this basis that the legislative, executive, and judicial departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time.

Legislative, etc., appropriation bill.

SPEECH OF HON. T. M. GUNTER,

OF ARKANSAS,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. GUNTER. Mr. Chairman, I feel compelled by a sense of duty to my constituents, to the men who have four times honored me with their confidence and intrusted to me the responsibilities that rest upon a Representative in the American Congress, to state my reasons why I shall vote for the pending bill and the particular amendments now under discussion. I would not have considered this duty so imperative had not some of the gentlemen on the other side of the House adopted the line of argument they have; but, sir, when I hear it said upon the floor of this House by honorable gentlemen representing—or as I firmly believe, in making such statements, misrepresenting—constituencies from other sections that the people of my section are such guilty wretches that a horde of partisan United States marshals must be present at an election where they exercise the highest privilege accorded to freemen, that of selecting the men who shall make laws for them, to prevent these freemen from depriving other equally free men from the free exercise of the same privilege; and that it is necessary to exclude by an odious test oath all the intelligence of the country from the jury-box, under the false, the infamously false assertion that partisan feeling will weigh more strongly with them than the sanctity of an oath to administer justice; then, sir, I can no longer remain silent: I must rise in my place, as the representative of a southern constituency, and repel the slander, for, Mr. Chairman, it is a slander so vile that parliamentary usages and a sense of what is due to the high position of an American Representative prevent me from using the only language that could properly characterize it.

One other thing that has been harped upon until the subject is worn threadbare, and the iteration has become as monotonous as the beating of a tom-tom, is the statement that we upon this side of the House—we who represent upon this floor a majority of the American people—are controlled by a party caucus, and that party caucus is controlled by "confederate brigadiers." Mr. Chairman, I suppose, as I served in the confederate or, as some of the members here choose to term it, "the rebel army," that I am one of those intended to be designated by the term "confederate brigadier." It is intended as a reproach, but I do not so consider it. When in the great conflict, which was forced upon the country by the predecessors in this body of the gentlemen who now roll the term "confederate brigadier" as a sweet morsel under their tongues, I did what every brave, honest man of sound body and the proper age all over the country did, I volunteered in a sectional war to fight for my section, and to the best of my ability discharged my duty as a soldier.

The struggle was Titanic, and when after four years of heroic warfare, four years of which when an impartial history is written it will be recorded that the people of the South displayed a constancy and courage unparalleled in the annals of time—when, I say, at the close of these four years we sank exhausted, "bleeding at every pore," before the superior numbers brought against us, I in common with the other soldiers of the South laid down my arms, never more to be resumed in that cause. I took the oath to observe and obey the Constitution of the United States, and I have and I intend to abide by that oath. No man on this floor, no man in this country, from where the bleak waves of the Atlantic break upon the sterile and rock-bound shores of Maine to where the balmy breezes of the Pacific ruffle the waters of the Golden Gate of California, from where the icy winds of the north chill the marrow of the denizens of Minnesota to where the zephyrs of the Gulf scatter the orange blossoms of Florida, has the future prosperity and growth of this great country, the country of your fathers and of mine, more at heart than the "confederate brigadier" who now addresses you.

And I believe that in saying this I express not alone my own sentiments, but that of every confederate soldier, not only on the floor of this House, but of every one who honorably discharged his duty as a soldier. In time of war I endeavored to discharge my duty as a soldier, how I did it I shall leave others to say; in time of peace I shall as earnestly endeavor to discharge my duty as a citizen, true to every obligation that the name implies. But, sir, enough of this; I am not here to rake up the memories of the past, but to speak of the living present. Gentlemen on the other side may act as the actual hyena or fabled ghoul and dig into the graves of the dead for materials to color their ensanguined banner; I will none of it. The flag under which I am ranged has inscribed on its pure folds, "Unity, peace, concord, prosperity, for all and every part of our common country," and I would not have said one word of the past but for the language of some of the gentlemen on the other side.

Mr. Chairman, I shall not attempt to give verbatim the laws that it is proposed to repeal by attaching them to the appropriation bills. I shall state their substance and then give the reasons why I have voted and intend to vote for the repeal. One of these laws provides that the President of the United States shall have the power to station troops at the polling places where freemen assemble to exercise the right of franchise. That we have repealed. Another denies to any one the right to sit upon a jury unless he can take an oath that he did not sympathize with the rebellion. Another provides than an unlimited number of deputy United States marshals may be directed to attend any polling place, and, in the language of the law, "preserve order;" and still another provides for supervisors who shall scrutinize every ballot cast. These last we intend to repeal and modify until they shall have been brought into accord with the organic law of the land. This briefly summarizes the questions that have been and are before us. Gentlemen in the minority attack the majority for having attached the repeal of these measures to the bills which provide the money to maintain the Government and denounce our action in so doing as "revolutionary." Some of the leaders of the minority have said that if we would present the repeal of these laws as a separate measure they would vote for it. This is a confession on the part of the minority that the laws are unjust and should be repealed, for which confession I return them my thanks, as it can be clearly shown by precedent and law that our action in attaching them to the appropriation bills is just and proper.

The framers of our written Constitution, the organic law by which we are all governed, were largely influenced by the precedents which, through centuries of growth, had established both the written and the unwritten law of England, the mother country from which most of those who formed our laws had descended. We may, then, safely appeal to these precedents as a rule to guide our action. In constructing this organic law its makers were exceedingly careful to define the powers granted to each of the co-ordinate branches of the Federal Government and those which pertained to the sovereign States, that in forming the confederacy were surrendering a portion of their sovereignty and retaining the remainder. Following the English precedent which gave to the House of Commons the right to grant or withhold supplies from the Crown, our Constitution gave to the Representatives of the people the power to provide the means of maintaining the Government. It is, then, pertinent to inquire why the English House of Commons, the prototype of this House, was empowered to grant or withhold supplies. The answer is easily given. It was to place in the hands of the Representatives of the people the means of forcing the Executive to grant such measures of relief as those Representatives might conceive to be needed for the good of the country and the welfare of the people.

This being so, have we not the reason why the framers of our Constitution made a similar provision? Was it not because these wise and far-seeing men who had created a country feared that the time might come when the Executive would attempt to usurp powers not conferred on him, or refuse to sanction measures that the Representatives of the people demanded, that they gave to these Representatives the power to enforce their wishes? You will observe, Mr. Chairman, that in using this language I am, for the sake of argument, admitting the charge made by gentlemen on the other side of the House, that "the confederate brigadiers propose to force the President to sign the bill repealing these laws, or they will 'starve' the Government to death." In fact I do not admit the charge, for I have too high an opinion of the gentleman who is the Chief Executive officer of this great nation to believe that he will place himself in opposition to the will of the people, as expressed by their Representatives, on questions so momentous as those now before us; nor do I believe that any one on the other side has any warrant for the assumption that the President will veto the appropriation bills passed by this Congress. But, sir, I say that the language of the Constitution warrants the con-

clusion that its framers had in view just such an emergency as has arisen when they gave the House of Representatives the sole power of originating appropriation bills, and denied to any executive officer the power to expend public money until it had been duly appropriated. That was the sword the House of Commons held to coerce the King of England, and it is the sword given to the American Representatives to coerce the Executive should the time ever arrive when such coercion is necessary.

I desire to revert to a few examples from English history. In the time of Charles I the majority of the House of Commons was composed of Protestants, while Charles was a Roman Catholic. In January, 1628, the king desired a bill passed granting him certain moneys to arise from "tunnage and poundage." The Commons refused to consider the bill, because they conceived some legislation was necessary. The king sent three messages to the house, insisting upon the passage of the "tunnage and poundage" bill before the other was considered. The house refused, and presented the king with an address to this effect:

> That they had within these three days received his message for their present entering upon the consideration of a grant of tunnage and poundage, but the manner of possessing the house therewith being disagreeable to their orders and privileges they could not proceed therein. That they cannot but express their trouble to be inforced to spend that time in apologies, which might be spent in the service of his majesty and the commonwealth. That finding the extreme dangers wherewith our religion is threatened, they think they cannot, without impiety to God, disloyalty to his majesty, and unthankfulness to those who have trusted them, retard their proceedings until something be done to secure them in this main point.

And they concluded by respectfully asking the king to attend to their declaration before any other business. The king refused, and said:

> That he must either want power or be very ill counseled if religion be in so much danger as they affirm, and he desires the bill of tunnage and poundage may be dispatched to put an end to the questions that have arisen between him and some of his subjects, and thinks it strange that this business of religion should only be a hinderer of his affairs.

Mr. Chairman, could there be a more perfect parallel than this is to the circumstances under which this Congress was convened in extraordinary session. A majority of the last House of Representatives believed that the rights and liberties of the people were in danger. The only method by which they could compass the desired relief was by refusing the appropriations until that relief was granted. They did so, and this Congress was convened, a message was sent by the Executive stating the necessity of certain appropriations being made to maintain the Government. So far the parallel is complete. Like our predecessors in the last Congress, we believe that the rights, privileges, and liberties of the citizens are in danger unless certain measures of relief are granted. We are ready to make the asked-for and needed appropriations, but we say that the relief must be granted at the same time. Is there anything "revolutionary" in that? Unlike the English House of Commons, we have no "apologies" to offer to the Executive for our course. We do not have to account to him for our action, but to the people who sent us here, and, like the "Commons," we cannot grant these supplies without "unthankfulness to those who trusted us," unless in granting them we guard the liberties and privileges of the people from danger.

Now, sir, I desire to show how the liberties of the people are endangered by the laws which were placed upon our statute-books at a time when partisan zeal led the Congress of the United States to disregard the Constitution. Our constitutional Republic is founded upon the theory that government is made for the governed. Our forefathers declared:

> That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Upon this theory thus set forth our Constitution was framed. The sovereign power rests in the people, the whole people of the country. Not a part, but all of them. If they are not capable of self-government, then our system is a failure and our Republic must add one more to the long list of ineffectual efforts made by the people of almost every age and country to govern themselves. We must confess this, or concede that elections must be free. Can elections be free if the Executive head of the nation, the Commander-in-Chief of the Army and Navy, may at his pleasure order the officers, soldiers, and sailors under his command to guard the ballot-boxes? Guard them from what and for what? From the citizen who desires to deposit his ballot, who wishes to express his will. Is that the way to form a government "which derives its just powers from the consent of the governed?"

Sir, you may search the Constitution from beginning to end and you will find no line or sentence, no word or letter, that will justify any enactment that will uphold the Executive of this nation in ordering any officer, soldier, sailor, or marine to be present at any poll in any State or Territory of this Union. Were such line or sentence, word or letter, to be found, it would be in direct violation of and opposed to the whole tenor of the instrument, and would be void and of no effect. But, sir, nothing that can be fairly construed to contain such a grant can be found. The law on the statute-book which permits it is void, not voidable, but absolutely void as being contrary to the letter and spirit of our organic law. Hence its repeal is demanded, not only because of its unconstitutionality, but because of the danger that such a power could be made to the liberties of the people.

Our English forefathers understood this question well, and as far back as 1735, one hundred and forty-four years ago, the English Parliament passed a law making it a penal offense, which incapacitated the secretary at war from ever after holding any military or civil position, should he fail to issue an order directing the removal of any soldiers that might be stationed in any town or city at least two miles from said town or city on the day when an election was to be held. When we remember that at the time this law was passed soldiers were stationed in almost every city and town in England, we can see how important the English Parliament considered the removal of all appearance of executive interference with the freedom of elections. The distinguished Senator from Maine endeavored to ridicule the idea of executive interference because of the fact that but few soldiers could be used at the polls. It is not the few hundred soldiers scattered over this vast country that creates apprehension in the minds of the people. No, sir; that apprehension flows from a different cause: from the fact that a power is usurped that has never been confided to the Federal Government. "That way the danger lies." If we submit to one usurpation of power another may follow, and still another, until within a short space of time all the rights of the States may be swallowed up and a central despotism established at Washington. But enough of that. I shall pass on to consider other questions.

The right of trial by a jury of his peers is one of the most inestimable conferred by our Constitution; one that has descended to us by inheritance since the days when the Saxon Wittenagemote made laws for England. It is the safeguard of life, liberty, and prosperity; the brightest jewel in the diadem of liberty. Shortly after the close of the war of the rebellion, when the angry passions it aroused were still at a white heat, when most of the people of the South were looked upon with distrust, Congress enacted that any person should be disqualified for serving upon any jury in a United States court, for the following causes:

> Without duress and coercion to have taken up arms or to have joined any insurrection or rebellion against the United States; to have adhered to any insurrection or rebellion, giving it aid and comfort; to have given, directly or indirectly, any assistance in money, arms, horses, clothes, or anything whatever, to or for the use or benefit of any person whom the giver of such assistance knew to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms the execution of the laws of the United States, or whom he had good ground to believe to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; or to have counseled or advised any person to join any insurrection or rebellion, or to resist with force of arms the laws of the United States.

And it further enacted that the court or district attorney might exclude any one from a jury who would not take the following oath:

> You do solemnly swear (or affirm) that you will support the Constitution of the United States of America; that you have not, without duress and constraint, taken up arms or joined any insurrection or rebellion against the United States; that you have not adhered to any insurrection or rebellion, giving it aid and comfort; that you have not, directly or indirectly, given any assistance in money or any other thing, to any person or persons whom you knew, or had good ground to believe, to have joined, or to be about to join, said insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; and that you have not counseled or advised any person to join any insurrection or rebellion against, or to resist with force of arms, the laws of the United States.

The effect of that law, when it is enforced in any of the States lately in rebellion, is to exclude nine-tenths of the white people of those States from the jury-box. In other words it excludes intelligence, for but a small minority of the white men of the South can take that oath. Is it "a jury of his peers" when an intelligent white man accused of crime is compelled to be tried by a jury of ignorant negroes? The gentlemen on the other side of the House will not answer affirmatively, for they know such an answer would be untrue.

The next law which it is proposed to repeal in this bill is that authorizing the appointment of deputy United States marshals to attend the polls in all cities of twenty thousand or more inhabitants. The alleged object of this law is that—

> The marshal and his general deputies, and such special deputies, shall keep the peace, and support and protect the supervisors of election in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at the place of registration or polling place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who commits, or attempts or offers to commit, any of the acts or offenses prohibited herein, or who commits any offense against the laws of the United States.

This, I say, is the alleged object of the law, but not the true reason for its passage. That was to prevent and intimidate voters in sections where the United States Army could not be used for that purpose. The Army could be used to intimidate and drive voters from the polls in the democratic South, but not in democratic New York, and therefore "Johnny" Davenport was invented for that purpose, for this law at its inception simply meant "Johnny" Davenport. He, or some other like him, was to be intrusted with power to harass and destroy democrats, to drive them from the polls, and thus secure republican success. The testimony taken in New York and Philadelphia by the Senate committee presided over by Senator WALLACE, of Pennsylvania, shows what kind of men were selected as

special deputies and what kind of service was expected of them. Their business was to as far as practicable reduce the democratic vote, and the arrest of reputable citizens, seeking to exercise one of the privileges of citizenship, was intrusted to men many of whom, if they had received their deserts, would have been breaking stone inside the walls of some penitentiary. Another duty besides that of harassing democrats was confided to their "specials." They were to act as canvassers to hunt up republicans and bring them to the polls, and for this they were to be paid by the Government; and well paid, too, if we can judge of the total amounts by what we have been able to ascertain. In answer to a resolution of this House asking for the amount expended in 1878 for supervisors and deputy United States marshals, Mr. John Sherman, Secretary of the Treasury, submits the following as the amount already settled:

Supervisors and deputy marshals employed in 1878, *with compensation.*

States and districts.	Amount paid chief supervisors.	Number of supervisors.	Amount paid supervisors.	Number of deputy marshals.	Amount paid deputy marshals.	Total amount paid.
Alabama, southern	$1,551 71	.....	$1,000 00	.....	$1,000 00	$3,551 71
Georgia	.....	.....	.....	34	170 00	170 00
Illinois, northern	.....	224	4,480 00	224	2,240 00	6,720 00
Kentucky	116 00	.....	870 00	.....	870 00	1,856 00
Louisiana	1,313 60	206	3,600 00	120	4,000 00	8,913 60
Maryland	351 03	230	2,950 00	700	4,445 00	7,746 03
Michigan, eastern	.....	52	1,300 00	.....	2,935 00	1,435 00
Massachusetts	.....	282	8,460 00	.....	135 00	11,395 00
New Jersey	7,324 84	148	3,050 00	192	2,880 00	13,254 84
New York, southern (city)	.....	1,225	30,000 00	1,350	27,000 00	57,000 00
New York, eastern	15,972 33	354	10,620 00	584	6,500 00	33,092 33
New York, northern	7,558 80	374	11,000 00	374	7,000 00	25,558 80
Ohio, southern	740 45	.....	890 00	71	447 78	2,078 23
Pennsylvania, eastern	5,830 00	1,370	27,440 00	750	7,550 00	40,820 00
Pennsylvania, western	.....	312	3,121 00	.....	.....	3,121 00
South Carolina	579 35	34	680 00	.....	730 00	1,975 35
Virginia, eastern	585 00	70	620 00	102	570 00	1,775 00
Total	41,922 51	4,881	110,081 00	4,725	68,442 78	220,446 29
Amount paid United States commissioner for services under election laws in New York City	.....	.....	.....	.....	.....	2,267 95
Total expenditures reported for 1878	.....	.....	.....	.....	.....	222,714 24

How much more remains as yet unsettled is one of those things "no fellah can ever find out," but as only fourteen States have been heard from and the total expenditure in these was $222,714.22, we may reasonably expect a much larger grand total when the returns from the other twenty-four States come in. Every effort to secure information on this subject is met by the Federal officials with most obstinate resistance, with all the impediments that can be thrown in the way of the searcher after facts. In parts of twenty-two States, as is shown by the following table, there was expended in 1876 $285,921.27:

Supervisors and deputy marshals employed in 1876, *with compensation.*

States and districts.	Amount paid chief supervisors.	Number of supervisors.	Amount paid supervisors.	Number of deputy marshals.	Amount paid deputy marshals.	Total amount paid.
Alabama, northern	.....	.....	.....	150	.....	.....
Alabama, middle	.....	.....	.....	244	.....	.....
Alabama, southern	$2,208 38	19	$500 00	192	$2,530 00	$5,238 38
Arkansas, eastern	.....	.....	.....	785	.....	.....
Arkansas, western	.....	.....	.....	214	.....	.....
California	1,578 99	105	5,220 00	244	4,225 00	11,023 99
Delaware	.....	.....	.....	135	.....	.....
Florida, northern	.....	.....	.....	745	.....	.....
Georgia	567 50	.....	.....	207	1,410 00	1,977 50
Illinois, northern	.....	188	5,640 00	115	1,105 00	6,745 00
Louisiana	4,463 33	270	4,115 00	840	5,705 00	14,283 33
Maryland	977 55	574	2,950 00	1,222	8,085 00	12,012 55
Massachusetts	253 20	66	660 00	117	1,170 00	2,083 20
Mississippi, northern	50 50	.....	.....	239	.....	50 50
Mississippi, southern	.....	.....	.....	9	.....	.....
Missouri, eastern	187 40	152	1,380 00	1,032	16,385 00	17,902 40
Nevada	.....	.....	.....	9	.....	.....
New Jersey	3,771 19	85	3,420 00	249	5,085 00	12,276 19
New York, northern	7,723 70	339	9,975 00	342	7,925 00	25,623 70
New York, eastern	12,150 52	370	11,674 00	723	11,986 00	35,810 52
New York, southern	19,383 36	1,070	32,115 00	2,500	39,785 00	91,283 36
North Carolina, eastern	591 84	.....	.....	166	.....	591 84
Oregon	.....	.....	.....	13	.....	.....
Pennsylvania, eastern (Philadelpia)	3,449 40	1,368	27,360 00	347	3,500 00	34,309 40
Pennsylvania, western	.....	224	2,240 00	49	490 00	2,730 00
South Carolina	879 14	.....	.....	338	395 00	1,274 14
Tennessee, western	129 00	.....	.....	30	150 00	279 00
Texas, eastern	249 92	33	1,800 00	18	900 00	2,949 92
Virginia, eastern	551 05	.....	1,630 00	201	1,785 00	3,966 05
Virginia, western	206 00	.....	.....	.....	.....	206 00
West Virginia	.....	.....	.....	4	.....	.....
Idaho	.....	.....	.....	4	.....	.....
New Mexico	.....	.....	.....	72	.....	.....
Utah	.....	.....	.....	18	.....	.....
Total	59,371 67	4,863	110,629 00	11,610	112,616 00	282,616 67
Amount paid United States commissioners in New York City for service under election laws	.....	.....	.....	.....	.....	3,304 60
Total expenditures reported for 1876	.....	.....	.....	.....	.....	285,921 27

By glancing at that table it will be seen that the marshal of the eastern district of Arkansas reports seven hundred and eighty-five deputies employed, and that no statement is made of the money paid to these deputies, and that the same is true as to Florida. Now, sir, while I cannot answer personally and of my own knowledge as to the condition of affairs in the other States and districts where supervisors

and deputy marshals swarmed thick as, and much resembling, the lice of Egypt, I can answer for Arkansas; and I assert here from my place on this floor, and on my honor as one of the Representatives of the people of Arkansas in the American Congress, that the employment of this horde of supervisors and deputy marshals in that State was totally unwarranted by any condition of facts existing there. To be more plain and emphatic, I assert that the assumption that it was necessary to employ these men to secure a fair election and preserve the peace in Arkansas is totally and unqualifiedly false. No such measures were requisite. The government of Arkansas secures to every citizen of that State, no matter what his politics and without reference to "color or previous condition of servitude," the full, free, and untrammeled right of suffrage. What is true of Arkansas I conceive to be true of the other States where these political lice were employed, and that, therefore, they were unnecessary at any point. In 1872 nearly $120,000 was expended in the city of New York alone by John Davenport for the purpose of preventing a free expression of the will of the people. These few facts as to the cost of supervisors, gleaned from the records, will show to the country the enormous amount of money expended for supervisors and marshals at elections, and the necessity for the repeal and modification of the laws which authorize their appointment.

But while the question of expense is important, there is another fact connected with this law that is of still greater moment to the people, and that is the fact that the entire machinery which we here propose to dispense with is but another form, differing from the Army in its composition, of interference by the Federal Executive in and intended to control elections. It is in fact an army of partisan soldiers collected at the ballot-box to overawe the voters, an army composed of the most unscrupulous and least responsible class, whose sole object is to force the election of such candidates as the Federal Executive may choose to favor. How long can a free government exist when such interference is tolerated?

Mr. Chairman, I have endeavored briefly as is possible to portray some of the dangers to a free government that arise from the laws which we propose to repeal by attaching them to appropriation bills—in other words, which we, the Representatives of the American people, say shall be stricken from the statute-books before we grant supplies. Our action simply says to the Executive, "Sir, we believe that the good of the nation demands certain changes in the existing law; we consider that to permit them to remain as they now exist endangers the liberties of the people, of which we are the special protectors; not knowing your views upon these questions, we say to you that on conceding this request of ours we will grant you the supplies demanded, and not otherwise." This was the course pursued by the English House of Commons in the case I have quoted, and I shall now give another instance where the same course was pursued.

In 1680, the King asked for a supply of money for Tangier. In the debate in the House of Commons on that subject, Hampden, a name which no American can hear spoken without emotion, said:

> I desire nothing but securing the Protestant religion, and establishing the King upon the throne of his ancestors. Let this be once well done and I am for giving money. But what will become of all, unless you make it in a plain way of bargain? There must be a trust somewhere, but not where the foundation of the difference has been laid. My motion, on the whole, is "that an address be made to the King, humbly to represent to him the condition of the kingdom, and that it is unseasonable to take the supply of Tangier into consideration."

I can say with Sir Thomas Player, who supported Hampden's motion:

> The last Parliament, I was the same man I am this, and so are the other gentlemen that serve for the city of London. * * * The city have chosen us again, in confirmation of their liking what we did. What I say is in the name of the greatest part of the commonalty of the city of London; they will give money, half they have, nay, all, upon securing their religion and liberties, and will trust God and set up again for another estate; but they will not give a penny for Tangier, nor anything else, till all be secured.

And so say I. Not a penny until "all be secured." Gentlemen on the other side may say this is a threat to the Executive. In fact, they will say so; but I deny it. It is a simple assertion of our rights as the Representatives of the people. Gentlemen over there who assume that the Executive will veto the appropriation bills because of the repealing clauses attached to them have taunted us on this side. They have said, "The President will veto the bills, and you will back down." I can answer for myself, sir. I want no better issue for me and my party to go before the people on than is the one contained in our present attitude. We can well afford as a political party to say to the country, "A republican Executive, backed by every republican member in Congress, refused to withdraw the troops from the polls and allow you free elections, and we, the democratic representatives, refused to make appropriations." Upon that issue we will obtain a verdict in our favor. But, sir, there is another tribunal besides the people to which every Representative here must answer—the tribunal of his conscience. Appealing to that, I can say that for myself I accept the issue, and I am prepared to refuse to vote one dollar of appropriations from now until the 4th day of March, 1881, unless the relief we ask for is granted.

Mr. Chairman, I have gone to English history for precedents, but, sir, I need only have gone across the Hall to where the republican members sit to have found abundant precedents for our action. The first republican House of Representatives that ever assembled in this Hall set the example of attaching legislation which they deemed vital to an appropriation bill. The Army bill in 1856 had the following proviso attached:

> *Provided, however, and it is hereby declared,* That no part of the military force of the United States, for the support of which appropriations are made by this act, shall be employed in aid of the enforcement of any enactment of the body claiming to be the territorial Legislature of Kansas until such enactment shall have been affirmed and approved by Congress. And this proviso shall not be so construed as to prevent the President from employing an adequate military force; but it shall be his duty to employ such force to prevent invasion of said Territory by armed bands of non-residents, or any other body of non-residents, acting, or claiming to act, as a *posse comitatus* of any officer in said Territory in the enforcement of any such enactment, and to protect the persons and property therein, and upon the national highways leading to said Territory, from all unlawful searches and seizures; and it shall be his further duty to take efficient measures to compel the return of and withhold all arms of the United States distributed in or to said Territory in pursuance of any law of the United States authorizing the distribution of arms to the States and Territories.

With that "Wilmot proviso" the Army appropriation bill went to a democratic Senate, and there the great founders and leaders of the republican party spoke in favor of it. Seward, Fessenden, Trumbull, Wilson, and men of that class declared it was right and proper that such legislation should be attached to the appropriation bills. Sir, when I read what these men said, and what their successors as leaders of the republican party say here to-day; when I think of the bold, brave men who built up that party, and of those who now control it, I instinctively remember the poet's description of the sphinx:

> For the sphinx with breast of woman
> And face so debonair
> Had the sleek false paws of a lion,
> That could furtively seize and tear.
> So far to the shoulders,—but if you took
> The beast in reverse you would find
> The ignoble form of a craven cur
> Was all that lay behind.
>
> She lived by giving to simple folk
> A silly riddle to read,
> And when they failed she drank their blood
> In cruel and ravenous greed.
> But at last came one who knew her word,
> And she perished in pain and shame.

So it is and has been with the republican party. It has lived for years by flaunting "the bloody shirt" and now perishes "in pain and shame;"

> For an Œdipus people is coming, fast
> With swelled feet limping on,

and they have discovered that only the "ignoble cur" remains. All that was ever grand or good in the republican party has perished and only the "ignoble" part remains to threaten the liberties of the people. But, sir, the example set by the first republican House of Representatives has been followed by every subsequent one. The distinguished gentleman from Texas [Mr. JOHN H. REAGAN] has prepared a tabulated statement, of which I avail myself, showing that from July 5, 1862, to March 3, 1875, republican Congresses attached three hundred and eighty-seven acts of general legislation to the regular appropriation bills:

New legislation on appropriation bills.

Department.	Date of acts.	Volume and page of laws.	Number of sections.	Number of items of such legislation.
Indian	July 5, 1862	Volume 12, page 529	2 to 6	6
Indian	Mar. 3, 1863	Volume 12, pages 792, 793	2 to 7	7
Post-Office	April 17, 1862	Volume 12, page 382	4 and 5	2
Post-Office	Feb. 9, 1863	Volume 12, page 647	3 to 5	3
Army	July 17, 1861	Volume 12, page 264	2 and 3	2
Army	July 5, 1862	Volume 12, pages 508, 509, 510	2 to 11	10
Army	Feb. 9, 1863	Volume 12, page 646	2	1
Legislative, executive, and judicial	Mar. 14, 1862	Volume 12, pages 368, 369	3 to 6	4
Legislative, executive, and judicial	Feb. 25, 1863	Volume 12, pages 694 to 696	2 and 3	2

New legislation on appropriation bills—Continued.

Department.	Date of acts.	Volume and page of laws.	Number of sections.	Number of items of such legislation.
Sundry civil	July 24, 1861	Volume 12, page 272	4	1
Sundry civil	Mar. 1, 1862	Volume 12, page 352	4	1
Sundry civil	July 11, 1862	Volume 12, page 534	2	1
Sundry civil	July 16, 1862	Volume 12, pages 582, 583	2 and 3, 5 and 6	4
Sundry civil	Mar. 3, 1863	Volume 12, pages 750 to 754	2 to 25	24
Army	June 15, 1864	Volume 13, pages 127, 129, 130	1, 2, 3, 4, 5	5
Army	Mar. 3, 1865	Volume 13, page 497	3, 4, 5, 6	4
Sundry civil	July 2, 1864	Volume 13, pages 347, 351, 352, 353	2, 3, *a*7, *a*8, *a*9	5
Consular and diplomatic	June 20, 1864	Volume 13, pages 139, 140	2, 3, 4	3
Deficiency	Mar. 14, 1864	Volume 13, pages 2, 5, 6, 7, 8	*b*1, 2, 3, 6, 7	6
Legislative, executive, &c	June 25, 1864	Volume 13, pages 160, 161	6, 7, 8	3
Legislative, executive, &c	Mar. 2, 1865	Volume 13, pages 160, 161	3, 6, 7	3
Indian	Mar. 2, 1865	Volume 13, page 180	2	1
Indian	Mar. 3, 1865	Volume 13, pages 562, 563	4, 5, 6, 7, 8, 9	6
Navy	May 21, 1864	Volume 13, page 85	2, 3, 4	3
Navy	May 2, 1865	Volume 13, page 467	6, 7	2
Military Academy	April 1, 1864	Volume 13, page 39	3, 4, 5	3
Army	July 13, 1866	Volume 14, pages 92, 93	4, *a*5, 6, 7, 8	5
Army	Mar. 2, 1867	Volume 14, pages 486, 487	2, *a*3, 5, 6	4
Sundry civil	July 28, 1866	Volume 14, page 321	*a*3, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18	11
Sundry civil	Mar. 2, 1867	Volume 14, page 466	2, 7, 8, 10, *a*11	5
Indian	July 26, 1866	Volume 14, page 280	4	1
Indian	Mar. 2, 1867	Volume 14, page 515	4	1
Legislative, &c	July 23, 1866	Volume 14, pages 206, 207	2, 3, 4, 5, 6, 7, 8, 11	8
Legislative, &c	Mar. 2, 1867	Volume 14, page 457	1, 2, 3	3
Navy	April 17, 1866	Volume 14, pages 37, 38	2, *a*4, 5, 6, 7	5
Navy	Mar. 2, 1867	Volume 14, page 492	2, 3	2
Post-Office	May 18, 1866	Volume 14, pages 49, 50	3, 4, 5, 6	4
Post-Office	Feb. 18, 1867	Volume 14, page 394	1	1
Deficiency	Mar. 2, 1867	Volume 14, page 470	2, 3, 4, 5, 6, 7, 8, 9	8
Army deficiency	Feb. 12, 1868	Volume 15, page 36	2	1
Army	Mar. 3, 1869	Volume 15, page 318	2, 3, 4, 5, 6, 7	6
Sundry civil	July 20, 1868	Volume 15, page 110	1, 7, 8, 9	4
Consular and diplomatic	Mar. 30, 1868	Volume 15, page 58	2, 3, 4	3
Consular and diplomatic	Mar. 3, 1869	Volume 15, pages 321, 322	2, 3, 4, 5, 6	5
Indian	July 27, 1868	Volume 15, page 223	2, 3, 6	3
Legislative, &c	July 20, 1868	Volume 15, page 110	2, 3, 4, 6	4
Navy	June 17, 1868	Volume 15, page 72	2	1
Navy	Mar. 1, 1869	Volume 15, page 280	2, 3, 4	3
Deficiency	Mar. 29, 1867	Volume 15, page 9	6	1
Deficiency	July 25, 1868	Volume 15, page 177	2, 3	2
Army *c*	July 15, 1870	Volume 16, pages 317, 318	2 to 25	24
Sundry civil	July 15, 1870	Volume 16, page 310	2, 3, 4, 5, 6, 7, 10, 11, *d*12, *d*13, 14	11
Sundry civil	Mar. 3, 1871	Volume 16, page 314	4, 8, *e*9	3
Consular and diplomatic	July 11, 1870	Volume 16, page 221	*f*2	1
Indian	Apr. 18, 1869	Volume 16, pages 39, 40	2, 3	2
Indian	Apr. 18, 1869	Volume 16, page 360	2 to 13	12
Indian	Mar. 3, 1871	Volume 16, pages 570, 571	3	1
Legislative	July 12, 1870	Volume 16, pages 250, 251	2 to 9	8
Legislative	Mar. 3, 1871	Volume 16, pages 494, 495	2, 3, 4	3
Navy	July 15, 1870	Volume 16, pages 330, 335	2, 4 to 19	17
Navy	Mar. 3, 1871	Volume 16, pages 534, 538	2 to 13	12
Post-Office	Mar. 3, 1871	Volume 16, pages 572, 573	3, 4, 5	3
Army	June 6, 1872	Volume 17, page 261	1, 2	2
Army	Mar. 3, 1873	Volume 17, page 545	1	1
Sundry civil	Mar. 3, 1873	Volume 17, page 530	*g*1	1
Consular and diplomatic	May 22, 1872	Volume 17, page 143	1	1
Consular and diplomatic	Feb. 22, 1873	Volume 17, page 474	2, 3	2
Indian	May 29, 1872	Volume 17, pages 189, 190	2, 4, 5, 7, 8	5
Indian	Feb. 14, 1873	Volume 17, page 462	2, 4, 5, 6, 7	5
Legislative, executive, and judicial	May 8, 1872	Volume 17, pages 82, 83, 84, 85	2 to 13	12
Legislative, executive, and judicial	Mar. 3, 1873	Volume 17, pages 508, 509	2, 4	2
Navy	Mar. 23, 1872	Volume 17, page 154	*h*2	1
Navy	Mar. 3, 1873	Volume 17, page 556	1, 2, 3	3
Post-Office	June 1, 1872	Volume 17, page 202	1 to 6	6
Post-Office	Mar. 3, 1873	Volume 17, page 559	1	1
Army	June 16, 1874	Volume 18, page 75	2	1
Army	Mar. 3, 1875	Volume 18, page 455	*i*2, 3	2
Sundry civil	June 23, 1874	Volume 18, page 230	4, 6	2
Sundry civil	Mar. 3, 1875	Volume 18, pages 399, 400, 401	4, 5, 6, 7, 8, 9, *j*11, 12	8
Indian	June 22, 1874	Volume 18, pages 176, 177, 178	3, 4, 6, 7, 9, 10, 12	7
Ha	Mar. 3, 1875	Volume 18, pages 449, 450, 451	3, 4, 5, 6, 7, 8, 9, 10, 12	9
Legislative, executive, and judicial	June 20, 1874	Volume 18, pages 109, 110, 111	2, 3, 4, 5	4
Post-Office	June 23, 1874	Volume 18, pages 232, 233, 234	4, 5, 6, 7, 9, 11, 12, 13	8
Post-Office	Mar. 3, 1875	Volume 18, pages 342, 343	2, 4, 5, 6, 7	5
Items of legislation in eighty-four bills				387

a Repeal of acts.
b Several clauses.
c Reorganizing Army.
d Appropriation for pier and railroad privilege.
e Civil-service reform.
f Parson Newman's mission.
g Giving jurisdiction over Alaska.
h Authorizing Secretary to sell vessels and materials.
i Tariff clause.
j Secretary of the Treasury authorized to buy bonds.

I do not quote this action upon the part of the republicans to justify any similar proceeding upon our part, but simply to answer the cry of "revolution" raised upon the other side of the House. If they were wrong it would be no justification of our acts to quote theirs, as two wrongs do not make a right. I only show their inconsistency. I need no justification for my conduct. I enter no plea in avoidance of my acts, but here in the presence of the American Congress and on my accountability to the people who sent me here, with a clear conscience I assert that we only exercise the high prerogative conferred on us by the Constitution of the country when we attach such legislation as we deem vital to the interests and liberties of the people to the appropriation bills and say without the one you cannot have the other. Like the Indian chieftain who led his people in their migration until he found a country beautiful beyond comparison, and striking his spear into the ground said, "A-la-bam-a," "Here we rest," so say I for myself and I believe for my party, "here we rest." Let the people- the sovereign people from whom all power comes—decide whether we have done well or evil. We abide their verdict at the ballot-box, and declare that the ballot-box shall be free when they make it.

Legislative, etc., appropriation bill.

SPEECH OF HON. L. B. CASWELL,

OF WISCONSIN,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. CASWELL. Mr. Chairman, on yesterday I occupied the floor a few minutes in expressing my views upon the riders to this bill. I called attention to Mr. Tilden's letter, showing that the policy of tacking upon appropriation bills general legislation, was condemned by him. By its exclusion alone, says Mr. Tilden, "can the revisory power of each of the two Houses and of the Executive be preserved."

Having this view of the independence of the Executive, if he were President would he approve the bill which has just passed the House, containing, as it does, a complete revision of the Army, as a rider to the ordinary appropriation bill? and would he approve the bill pending in this House and now under discussion, which proposes in addition to the necessary appropriations for the Government a complete change in the election laws? or would he add his veto and remind Congress and his party of the pledges made to the people when expecting their suffrages? Says the Constitution:

If he approve he shall sign it, but if not he shall return it.

The cry of unconstitutionality, is not a new one. We have heard that so often from the same source since the war began in 1861 that we are not terrified by it. The first gun fired from Sumter was said to be an unconstitutional shot. By it we were menacing South Carolina. The first call for seventy-five thousand troops by Abraham Lincoln was said to be unconstitutional, because Congress had not time to convene and order it. The draft which followed was equally unconstitutional. So was the emancipation proclamation, as well as every other step taken to suppress the rebellion, including the issue of Treasury notes and the legal-tender act. It is said upon the other side of this Chamber that the passage of the law in 1865, a modification of which is attempted by this bill, was one of the measures which abridged the rights of the citizen and permitted the military to be present at the polls, thereby intimidating the voter from a free exercise of his choice.

At that time the republican party had a large majority in either branch of Congress and was responsible for the laws which were passed. So tender were they of the rights of the citizen; so careful to prevent any interference on the part of the Army with the citizen, that it passed this law to restrain, under heavy penalties, the least interference by the military with the civil authority in any of the States except to "repel armed enemies of the United States or to keep the peace at the polls." Prior to this enactment, during a long succession of democratic administrations from Jackson down to and including the administration of Mr. Buchanan, the military force had no restrictions whatever except those found in the Constitution.

The act of 1865 went further than the law of any other country in abridging the powers of the Commander-in-Chief and of the armies. It was an olive branch extended to those who had arrayed themselves against the Government in the rebellion. Before that time and during the reign of the democratic party, the Army had been brought into requisition throughout all the States and Territories when necessary to enforce the laws of the United States. Why, then, do we hear this charge from almost every member who addresses the House in support of this amendment; certainly these gentlemen should not complain that in 1865 we placed restrictions upon the Army. We have repeatedly offered to consent to a repeal of the entire act, leaving the Army without restrictions as it always had been prior to the passage of this law. In fact, at this very session we have all voted in favor of such repeal, while those upon the other side voted solid against such repeal.

The amendment to the bill making appropriations for the support of the Army that has passed this House and is now pending in the Senate, attempts to strike out of the law of 1865 the exception that I have referred to, "to keep the peace at the polls." This would so modify the law of 1865 as to extend its prohibitory clause to keeping the peace at the polls, leaving no instance in which the Army, or any portion of it, or any armed force, under civil or military officers of the United States, could be made useful except "to repel the armed enemies of the United States." How, then, can it be said that the act of 1865 is either oppressive or subversive of the rights of the citizen or unconstitutional? It cannot be subversive of the rights of the citizen, for it is a restraint upon the coercive power of which they complain, and not unconstitutional unless it is an unauthorized restraint upon the Executive. That, however, is a question which would more properly originate upon this than upon the other side of the House.

Military oppression has been echoed and re-echoed throughout the land ever since the war began. It has been promulgated from the democratic stump in every campaign for the last eighteen years, and we hear it upon this floor in the succeeding efforts to reduce the Army to a nominal guard for the protection of guns and arsenals merely. The country is told that we have a large and unnecessary Army maintained at great expense by taxes forced from the people, and that the principal use made of that Army is the intimidation of democratic voters. An examination of the facts will show how groundless is the charge.

Mr. Chairman, let us compare the Army of the United States with that of other countries. Scarcely a power exists having business or commercial relations with us that has not a larger army than we have. Ours cannot exceed 25,000 men for thirty-eight great States and eight Territories; with our extensive boundary and hostile Indians we have not one soldier to a county. France, with a population less than ours, has a regular army of 470,000; Russia has an army of 788,000; Germany, 400,000; Italy, 200,000; Spain, 330,000; Great Britain, 133,000; while little Denmark, with a population of 2,000,000, has an army of 36,000, and Portugal 36,000. Four of the great powers have over 400,000 each; six have over 300,000, seven over 200,000, eleven over 100,000, thirteen over 50,000; twenty have an army greater than the United States.

It costs France to maintain her army $2.70 per head of her population; Germany, $2.16 per head; Great Britain, $1.90; Russia, $1.99; Spain, $2.97; while it costs the United States only ninety-five cents. In view of these facts I ask what becomes of the complaint that our Army is large, expensive, and oppressive? The lesson taught us at the breaking out of the late war, and the sad experience which followed, will admonish us and be remembered while our maimed soldiers are with us and our great debt unpaid, that an army at our command sufficient to suppress insurrection and enforce obedience to the laws may shield us from a similar calamity.

Mr. Chairman, no other country on earth could survive with an army so small in proportion to its population. This fact is chiefly attributable to the intelligence of our people and the benevolence of our institutions and laws. No other form of government offers such inducements. No other country is so tender of the rights of its citizens. And this is due to the reign of the republican party in the last twenty years.

I venture to say here upon this floor, that with the small Army which we now have, if in power, having the Executive and both branches of Congress, armed rebellion in the United States could not exist a moment, for, with our view of the authority of the General Government to enforce obedience to its laws in the States, armed treason could and would be suppressed at once. Prior to 1861 we had been living under democratic administrations. The doctrine of State rights obtained and was enforced. Scarcely any aid could be had from the scattered and enfeebled Army then at our command; no force was made effectual until the spirit of republicanism brought to the aid of Mr. Lincoln volunteer forces, with new officers and patriotic hearts.

Mr. Chairman, passing from the military force to the bill now under discussion before the House, wherein it is sought to repeal the laws which authorize the courts to appoint a certain number of supervisors to be present and aid in the conduct of congressional elections in large cities, we find the same complaint made upon the other side of the Chamber, that the law which they seek to repeal is an unwarranted interference with State authority and of the elective franchise. The question of the right and authority of the General Government to enforce its laws is here again presented. That Congress possesses the power to enact the laws, little doubt can be entertained. Those who favor these amendments are certainly estopped from denying the validity of the law, for they only seek to amend it instead of striking the whole of it from the statute, as they should do if it were unconstitutional.

They leave upon the statute the right to appoint supervisors and marshals, and admit they can attend at elections. But they take away by this amendment the right to interfere, or in any manner object to fraud or violence, however much it may be exercised in their presence. They are to stand by and witness, without power to prevent, fraud, coercion, or intimidation, for the reason that the Federal Government has no executive authority even to enforce its own laws, except through the slow process of the courts. If the officers who conduct elections, keep the peace, and maintain order were obliged to submit every question which might arise to the courts before voting could be continued or order restored, there would be an end at once to all elections, and officers would be of no account whatever. Laws which cannot be enforced are useless; officers are equally so unless they can act.

The laws of Congress are for the whole people who reside in the States, Territories, and upon the high seas. Each State enacts laws for its own domestic wants, such as affect the citizens of the particular State. For such purpose the authority is quite exclusive, but there is another class of legislation reserved to Congress. It is that which concerns more than one State or the citizens of several States jointly. We have interstate commerce, and we grant franchises and privileges extending through several States, which may be exercised in either, also upon rivers and lakes, passing through and bordering upon several States. We have postal service extending everywhere, and Congress has power to make and enforce all needful laws and regulations for a successful operation of these rights and for their protection. Congress will pass quarantine laws. Legislation of this character is sought at the present session by those who oppose these election laws as a protection against the yellow fever. It will impose

penalties for ill-treatment to animals, while being shipped from one State to another in cars. The States, as a whole, have an interest in Congress. Every member who is elected in any State has an interest in his own and every other State. Congress is the mother of States. It creates them and guarantees to them a republican form of government as well as protection. Every State is interested in a free and fair congressional election in every other State, for the members, when elected, make laws for all the States. Hence it is not only proper but it becomes the duty of Congress, acting for all the States together and in the protection of their respective rights, to not only enact but enforce laws which will secure to the people free and fair elections. For that purpose the law which is to be repealed by the riders upon this appropriation bill, provides for the appointment of supervisors, one from each party, to be present at voting places when required in large cities, to protect those voting for members of Congress in the exercise of that right. They are appointed by the courts upon the petition of private citizens. They can inspect the registry and act as the agents of the General Government in securing the election of members who are the choice of, and who will represent the people in making laws for them.

The enactment of this law was preceded by unparalleled frauds committed in the city of New York in 1868 when, it will be remembered, thirty thousand illegal votes were cast in that city alone. In some precincts more votes were polled than there were living souls—men, women, and children—residing in the precinct, as appears from the census which soon followed. State authority was ineffectual, if willing, to prevent such frauds. The naturalization of citizens was obtained in the United States courts; State officers, or the police force of the city, could not invade or inspect the records of these courts, and in many places the local authorities were either indifferent to the frauds thus perpetrated or gave a tacit consent. This law, which placed on duty Federal supervisors, was a great blow to democratic success, not only in New York but in many other localities, and unless it can be repealed and the rogues and repeaters who huddle in large cities about the polls on election day let loose, the State of New York will be counted upon the republican side in 1880.

Hence it must be struck down; even at an extra session of Congress, finding its passage as a rider upon an appropriation bill, under a moral, if not physical, duress upon the Executive, as indicated by Mr. Tilden. It is idle to claim that the enforcement of the election laws is an unauthorized assumption of power. If we submit and allow the elections in which we are interested to become corrupted, and Congress made up of men who are not the choice of a free people, how long will it be before our liberties and our institutions will be overthrown? Scarcely a session of Congress exists without the appointment of committees to go into the States and investigate these elections. We overturn the certificates of State officials, recanvass and determine the elections of our own members. May we not, then, send agents to be present at the polls and aid in securing a free election and a fair count in the first instance? We expend large sums of money in these investigations made after the election is held. We summon witnesses, pay for serving subpœnas, printing evidence and reports, and in overturning fraud after it is committed; and may we not expend something in preventing the fraud while the vote is being cast?

This attack upon Federal authority is the same in a different form which ripened into open hostility and brought on the war. Those who urge it on are the same. They claim to be for the union of the States, but it is very apparent the Union which they would have and the Federal Government they would acknowledge would scarcely be worth having. It would be a confederacy of States, leaving to the General Government little else than a name. They would strike down the revenue laws as well as the duties on imports, leaving no source from which means for the support of the Government could be obtained except by direct taxation of real estate. The great income to the Treasury which is now being gathered from the consumers of tobacco and whisky, and from the people of wealth who wear the fabrics of other countries, would be cut off, and the soil alone, from which we draw the necessaries of life, would be burdened with the expense of maintaining the Government.

This is democracy. This is the doctrine of State rights which the party now in power in Congress will dish out to the people. We would soon lose our commerce, our internal improvements, our Army, and our Navy. We would lose our standing as a great power among the nations, and the glory of a great republic would fade away.

Mr. Chairman, the nation, the Government itself, has met with one continued success since the republican party came into power. Its achievements have never been excelled in the same length of time by any country in the world. When that party took charge of the Government, open rebellion existed in eleven of the States, while in several others it was fast organizing. Nothing but courage and a patriotism unequaled among men could have overcome it and restored peace to the country. The first work of that party in the interests of humanity was to strike off the shackles from four millions of human beings and make them citizens, with the elective franchise extended to them, and such other rights as are made common to all the people of this country. We pardoned the hand that had been raised against the life of the nation.

Instead of punishing, we forgave and accepted upon an equal footing the men who had sought to destroy us; we removed the disabilities which attach to treason, and extended a fostering care, until they have actually taken our place in Congress and to-day control the Congress of the United States. They are in the situation and have the power to consummate in a peaceable manner that which they could not do by the sword. We shall soon find ourselves governed by the men who organized and attempted to maintain the confederacy. This could not have been, had a free and fair election been had in all the States; and instead of striking down such safeguards as we now have, we should add more to them. Instead of keeping armed authority from the polls, we should provide it, in every place necessary, until the real will of the people may be exercised.

Why is it, if Federal authority has intimidated democratic voters and kept them from the polls, that we find here in this House solid democratic delegations from republican States? Why is it that the democratic vote is polled to its full capacity at the elections in the States of Mississippi, Louisiana, South Carolina, and Florida, while not one-half of the republican voters go to the polls? The cause is too apparent. The colored people of the South first sought their rights through the ballot-box in the way provided by the Constitution and the laws. But, if allowed to vote at all, they are in many instances defrauded in the canvass, pursued even to the floor of this House, where they are sure to meet with defeat under democratic rule. Another method is now being sought by them: following the example of the first settlers of this country, they are fleeing from the land which persecutes them.

But this race alone is not to feel the oppression of the democratic party. People of all classes must now submit to their reign; caucus legislation is to rule Congress and the country; all questions of a political nature are thus to be settled. In that caucus will be found a majority from the States which composed the late confederacy. Those who were in the confederate service outnumber those who were not, and they will control the caucus, which will control the legislation. Were it not for the Executive the whole Government, as well as the Army and the Navy, would as effectually pass into the hands of those who so recently sought the destruction of the Union as though they had not only succeeded in establishing their own independence but also in conquering the States of the North. If they are to elect the next President and continue in power beyond the present administration, how long before they will add their soldiers to the pension-roll and their debt to ours?

The haste of the democratic party in Congress to join the greenback element is only a step preparatory to this.

Dilute the currency, furnish money by the process of printing, and the way to assumption will be much easier than that of redemption. We are now under their control. The nation must pass through an ordeal of democratic triumph; their power must be felt before it can be rejected.

The twenty-seven States which adhered to the Union, and which during the last fiscal year paid $221,000,000 taxes into the United States Treasury for the support of the Government, are to be controlled and governed by the representatives in Congress from the eleven States which went out of and made war upon the Union, and which during the year paid into the Treasury only $13,600,000.

In the House there are sixty-five members, in the Senate twenty Senators who were officers in the confederate army, and three other Senators who held civil positions. In the Senate twenty-three cast their fortunes with the South in her effort to secede from the States. They are a majority of the party now in power in that body. The sixty-five members of the House who were in the confederate service are sufficient to carry any caucus of the dominant party in this House, and thus it will be seen that the legislation of both Houses of Congress is completely under the control of the late confederate army.

But, Mr. Chairman, the Republic will survive. I have great confidence in the patriotism of the people. They have only to see the danger which threatens us. They will not permit the Federal Government to be destroyed. They will rally again, not as they did in 1861, in the battle-field, but they will speak through the elective franchise and place the party in power again which has already served the country so well.

"Take away the sword;
States can be saved without it."

SPEECH OF HON. J. D. C. ATKINS,

OF TENNESSEE,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. ATKINS. Mr. Chairman, I shall speak in advocacy of the great English and American doctrine of the non-interference by the military with the freedom of elections and upon the nature and extent of the veto power under the Constitution. This Government is founded

upon the will of the people, and that will when constitutionally and deliberately expressed should not be repressed by the arbitrary dictum of one man. If the President vetoes the Army bill it will be the third veto which he will have interposed to the will of Congress since his advent to power. The first was to arrest the remonetization of the old silver money of the people and its restoration as a legal tender. The general, almost universal, demand of a defrauded people that this great crime against honest industry should be rebuked and the injury as far as possible remedied was promptly acceded to by Congress by large majorities in each House. In the teeth of that popular will so manifest and outspoken, the President had the temerity to undertake to thrust his veto; but the constitutional majority in each House as promptly and with but little ceremony proceeded to set it aside, rebuke him, and thus vindicate the people.

Again, when Congress would protect the free institutions and honest labor of this country from the poisonous contamination and the insidious undermining of our social fabric by preventing a horde of semi-civilized Mongolians from overspreading the country like the locusts of Egypt, the President, not the least weakened by his former failure, rushes to the rescue of the interests of these unchristianized foreigners against our own people, and this time overrides the will of Congress. If we are called to consider his third veto, it will not be on an ordinary bill, but one of the great appropriation bills for the maintenance and support of the Army. Surely his reasons would be overwhelming for such an extraordinary exercise of arbitrary power, as it is the first instance that an appropriation bill will have been vetoed. To state the case fairly, Congress in that bill simply declared that the Army should not be used to keep the peace at the polls. Never in the history of the country had it been the custom to employ the military arm of the Government to interfere in any way with the free and untrammeled right of the people to vote as they please until during and since the late war. Feeling that the war was over, and that such statutes as the one proposed to be repealed was a relic of military despotism which in times of revolution are apt to prevail, but ought now to be dispensed with, the majority determined upon its repeal, and so passed the bill during the Forty-fifth Congress through the House, but it failed to secure the concurrence of a republican Senate, and, therefore, failed. Convening upon the proclamation of the Executive in extra session, both Houses concurring in political sentiment, the appropriation bill for the support of the Army is again passed with the same repealing clause forbidding the use of troops at the polls; and to this patriotic action will the President say "No?" If he does, in effect he says, "I cannot consent to feed and clothe the Army unless I can be allowed to employ the troops either as soldiers or as armed policemen to keep the peace at the polls;" in other words, to manipulate and control the elections in the interests of the republican party, for that is the true purpose. The issue is broad and distinct. Shift it as you will, cloud it with whatever fine-spun theories sophistry may refine, torture it into whatever seeming plausibility partisan ingenuity may invent, the plain fact is here presented, that republicans in Congress are unwilling to feed and clothe the Army unless that Army can be used to control elections.

The change in position of the republican leaders in reference to the use of troops at the polls, since the last session of Congress, is noticeable. Mr. Foster, one of the members of the conference committee on the Army appropriation bill, said:

> With this feeling I offered what I thought was a fair basis of compromise, or settlement if you please, which included the question which is now before the House. That basis was something like this: that the republican side of the House would agree to the proposition that is embraced in this Army bill, and would agree further to what is known as the jury clause in the legislative bill; and that the democrats should recede from what is known as the supervisors and marshals clause in the legislative bill.

General GARFIELD, the Nestor of the party in the House, said in his opening speech:

> The question, Mr. Chairman, may be asked, why make any special resistance to the clauses of legislation in this bill which a good many gentlemen on this side declared at the last session they cared but little about, and regarded as of very little practical importance, because for years there had been no actual use for any part of these laws, and they had no expectation there would be any? It may be asked, why make any controversy on either side? So far as we are concerned, Mr. Chairman, I desire to say this: we recognize the other side as accomplished parliamentarians and strategists, who have adopted with skill and adroitness their plan of assault. You have placed in the front one of the least objectionable of your measures; but your whole programme has been announced, and we reply to your whole order of battle. The logic of your position compels us to meet you as promptly on the skirmish line as afterward when our intrenchments are assailed; and therefore, at the outset, we plant our case upon the general ground upon which we have chosen to defend it.

The programme now is to stand by all of the odious laws which trammel the freedom of elections and to use all the agents of intimidation and physical force which is best represented by armed soldiers under military commanders to alarm the weak and ignorant voters and drive them in dismay from the ballot-box. To effect these purposes will Mr. Hayes, in the last resort, in the face of the majority in both Houses of Congress legally elected and fresh from the bosom of the people, pervert the use of the veto from its legitimate functions and make it the instrument of the destruction of free elections? Shall the bullet be substituted for the ballot in the election of Representatives to this House? Shall it be said to the civilized world that the people of the United States are incapable of self-government; that their free elections are a simple fraud and mockery, and that a standing army in time of peace is the only safe custodian of the public liberties? It is to this complexion that it has come at last.

The well-known and oft-repeated statute of George II, which crowned the privileges of the English people on the day of election with all of the attributes of sovereignty in a manner with which the practices of this Government since the war, in several of the Southern States especially, would contrast most unfavorably, reads thus:

> *Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in Parliament assembled, and by the authority of the same*, That when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or any member or members to serve in Parliament, shall be appointed to be made, the secretary at war for the time being, or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall, and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders, in writing, for the removal of every such regiment, troop, or company, or other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place where such election shall be appointed to be made, out of every such city, borough, town, or place, one day at the least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, as aforesaid, until one day at the least after the poll to be taken at such election shall be ended and the poll-books closed.—*Statute George II.*

Although in the British realm suffrage was then and still is restricted, yet those who are clothed with the inestimable boon of the elective franchise exercise it untrammeled and unawed by British bayonets. Strange that here where suffrage is universal and the widest range of liberty is by the theory of our institutions granted to the citizen, he is compelled to vote beneath the arch of glistening bayonets, if the Executive so decrees. The idea of bayonets at the polls is un-American and inconsistent with the genius of free institutions. Scarcely a State in the Union that does not provide in its organic law against the use of troops at the polls and positively restricts them from being nearer than two miles. In no country where the English language is spoken are troops allowed to be near the polls. Everywhere English people and their descendants repudiate this badge of despotism.

It has been urged upon this floor that we are coercing the Chief Magistrate; but is not this complaint of coercion by Congress of his prerogatives a most lame and impotent conclusion? How is he coerced? None of his rights are trenched upon. He is not stripped of a single prerogative, either as a civil magistrate or as Commander-in-Chief of the Army; for in neither capacity can he sign a warrant or give a command except in strict accordance with the law of the land. He is neither a dictator nor a military despot. He is entitled under the Constitution to command the Army, but he must command it according to law. He is as much amenable to law as the humblest citizen or soldier is. Congress has the right to raise and equip armies and to support them. It may raise a large army or a small one, or it may, in the exercise of its constitutional powers, decline to raise any Army. Congress has the right, under article 1, section 8, clause 14, of the Constitution, to make regulations for the control of the Army, and the President can only command that Army in accordance with these regulations. The Army is forbidden by the Constitution from being quartered in time of peace upon the people. Governor Palmer's ringing, manly, and patriotic protest a few years since against the sending of troops into Illinois is still fresh in the minds of the people. The order was in plain violation of that section of the Constitution to which I have just referred. Only under certain conditions plainly prescribed is the President authorized by the Constitution and the laws made in pursuance thereof to send troops into a State.

Article 4, section 4, of the Constitution reads as follows:

> The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

Drawing no fine distinction upon this language it is clear that the words "United States" means the law-making power and not the mere Executive; and that therefore it is within the power of the Government of the United States to interfere in a State by sending Federal troops to protect such State from invasion; or in case of domestic violence, on the application of the Legislature, if not in session or cannot be convened, then on the application of the governor. Congress passed an act in accordance with that grant of power authorizing the President whenever so called upon by a State to render the required aid. Any order of troops into a State for any other purpose is directly and palpably in conflict with the provision just quoted. Did Congress coerce the President in passing the Army bill?

But it is contended that it is the duty of the Government of the United States through the Executive to take charge of and control the elections of members to Congress.

Although it is proper that neither the Executive nor Congress should attempt to coerce each other, each having its own constitutional functions and prerogatives clearly defined in the organic law, still it is impossible to reach the bed-rock of this issue in a logical point of view without considering the respective powers of the Executive along with those of the legislative department and the State governments.

Article 1, section 4, of the Constitution provides that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regula-

tions, except as to the places of choosing Senators." This is the only clause in the Constitution which affords the least semblance of authority in the General Government to supervise or otherwise control the elections of Senators and Representatives in Congress.

The electors of Representatives are citizens of the States, and derive their right of suffrage from the State government. The Constitution, it is true, requires the qualifications of the electors to be the same as the qualifications for the electors of the most numerous branch of the State Legislatures. But the State first prescribes those qualifications, and the General Government secondarily adopts them. Citizenship of the United States does not entitle any man to suffrage in a State for any purpose. The States may and have in some instances conferred suffrage upon persons not naturalized. It was done in the State of Minnesota. But the fifteenth amendment has placed upon the States an inhibition depriving the States from restricting suffrage to any person on account of race, color, or previous condition of servitude. Under the fifteenth amendment suffrage is not conferred upon the colored or freed man; but it is provided that suffrage shall not be denied to any person on account of his color, his race, or his previous condition. But the State could restrict suffrage to the colored man as well as to the white man by requiring other qualifications; so that at last the question of suffrage is one belonging to the State exclusively. Suffrage is a State privilege; if, then, the right of suffrage is violated, it is a State privilege or right that is violated. Now, whose duty is it to protect the privileges and rights conferred upon citizens by the States, the General Government, or is it the duty of each State to protect its citizens in the enjoyment of the rights which the State confers upon its citizens.

But should the States fail or refuse to protect its citizens in the exercise of the elective franchise, as it is its primary duty to do, then the Federal power inures. But the ultimate and secondary power of the United States to make or alter the times places, and manner of holding elections cannot be tortured into the power to prevent the citizen of a State from voting. Suffrage is derived from the State, and any interference on the part of the General Government that deprives the citizen of his privilege to vote would be clearly unconstitutional. It would be the same as giving original control to the General Government over the right of suffrage. It would be subjecting the substantive right of suffrage, which is universally admitted to be conferred by the State upon its citizen, to the contingent power of Congress to regulate the mere way or method or manner of exercising the elective franchise. Now if the original power to regulate the manner of holding elections belongs antecedently in Congress, it is the duty of Congress to pass laws protecting the citizen at the polls and otherwise regulating the elections, which it has done.

If the States possess this power, however, primarily, and the General Government possesses it secondarily, then such laws are unconstitutional, because no State has failed to prescribe the times, places, and manner of holding elections for Senators and Representatives. Analyze the language. The power is first lodged with the State and then it is enjoined as a duty; it is made mandatory: "shall be prescribed in each State by the Legislature thereof." If the State fails to comply with the injunctions laid upon it, then the Constitution remedies the defect or omission by saying "but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." If the framers of the Constitution had designed to vest this power in the first instance in Congress, why did it not say that the times, places, and manner of holding elections for Senators and Representatives shall be prescribed by Congress? But instead of that, this duty is devolved upon the State Legislatures. It is fair to conclude that this is not a dual power to be exercised by both the General Government and by the States at the same time, for that would result in confusion. One, then, or the other must have precedence in prescribing the times, places, and manner of holding elections. The language is that the States *shall* perform this function or duty, and it is imperative. Then follows as a part of the same sentence "but the Congress *may* at any time make or alter such regulations," &c., being in the potential mood and therefore merely admissory or advisory.

Alexander Hamilton, who always leaned toward the aggrandizement of central power, said in the fifty-ninth number of the Federalist, speaking upon this clause of the Constitution:

> It will not be alleged that an election law could have been framed and inserted in the Constitution which would have been applicable to every probable change in the situation of the country, and it will therefore not be denied that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded that there were only three ways in which this power could have been reasonably organized; that it must either have been lodged wholly in the National Legislature or wholly in the State Legislatures, or primarily in the latter and ultimately in the former. The last mode has with reason been preferred by the convention. They have submitted the regulation of elections for the Federal Government in the first instance to the local administrations.

Judge Paschal says:

> The manner of conducting elections as mentioned in the Constitution means by ballot or *viva voce*. Manner relates to the method or form, and is never applied to vital or substantial matter, no more than the manner of speaking is to the subject-matter and essence of the speech; the method or form of voting may be by ballot or orally; but the vital part of suffrage, the person voted for and the free and untrammeled right to exercise that franchise as a citizen of a State, cannot be controverted, subject of course to the law of necessity, when the contingency may arise for its exercise.

If Congress has any control over the Federal elections as an original proposition or primarily, then it has all control. It cannot have a part and the States a part, for they might not agree, and there would be a conflict which was not designed of course.

From the foregoing it is clear that the President has no duty to perform in reference to keeping the peace at the polls. That duty is a State duty, and should be performed by State officers. Least of all can it be done by soldiers unless upon the application of the Legislature of a State or by the governor. It is the duty of the President to execute the laws of the United States, not of the States. Now, in what respect does the Army bill infringe upon his rights, trench upon his prerogatives, or coerce him or deprive him of his rightful powers?

Has Congress in simply imposing a condition upon the use of the money it collects from the people for the support of the Army, in requiring that the Army, which Congress can create or abolish at will, shall not be employed to keep the peace at the polls—that is shall not interfere with the people while they are voting—by that means coerced the President, violated any of his prerogatives, or exceeded any of its own constitutional powers? I propose to investigate that proposition fairly; and if Congress has done either, I am ready to concede the fault and to promptly make the *amende*. Let us consult the Constitution itself and see what its teachings and injunctions are. We are all sworn to support it. I trust it is not an idle ceremony. It divides the powers of the Government into three heads, the legislative, executive, and judicial. Article 1, section 1, declares that—

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

This is a government of checks and balances. The Congress makes laws, the President executes them, and the judiciary expounds them. Now, has the President a right to make laws? Is he a co-ordinate branch of the legislative department of the Government?

The Massachusetts constitution contains the following:

> The legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them.

The beauty and symmetry of our whole theory of government stands upon this broad and well-defined division of powers. It is the corner stone of free government. Every State constitution conforms to this theory.

But in the old Commonwealth of Massachusetts, where stand many of the immortal monuments of the great struggle for freedom in 1776, this distinction between the legislative, executive, and judicial departments of that State government is more strongly and clearly drawn than in many others of the State constitutions. Perhaps it was the tyranny of George III, who had quartered troops among her people, that suggested this restraint upon the executive power and authority.

It is the duty of Congress to make laws; it is the duty of the President to execute them. Congress is the law-making power of the Government. Congress cannot execute laws; nor can the President make laws. It is his duty to give Congress information as to the state of the Union from time to time in writing, and to recommend measures for the welfare of the people, but no further. It was never contemplated by the framers of the Constitution that the President should endeavor to interfere with legislation further than to arrest hasty and unconstitutional measures and return them with his objections, so that if his objections are valid and convincing Congress may have the benefit of them and retrace its action, otherwise to pass the measure over the veto by the required constitutional majority. It was never intended that Congress should legislate under the menace of the veto to repress its freedom of action. If the President has the right to veto at will any bill which may pass both Houses of Congress without reference to its unconstitutionality or want of due consideration, thus setting at defiance the law-making power of Congress, then is the Executive not merely a part, but a controlling part of the law-making power. If that be the true theory, then Congress is but a mere adjunct of the Executive, and it can have no free and independent action of its own unswayed by the apprehension of a presidential veto. In other words, under such a theory of government the President becomes a dictator, and the country is controlled by the one-man power. Congress then being exclusively under the grants of the Constitution the law-making power, has of its own volition the right to require any constitutional conditions it chooses in the disbursements of the public moneys. There is no coercion of the President whatever.

The veto is a tribunician power which has been transmitted from the Roman republic. It was designed for the protection of the people, not to oppress them or to overawe them with the Army or to drive defenseless unarmed citizens from the polls.

Let us see what the Constitution says of it. I read article 1, section 7:

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it.

Here is at best but a negative power. It should not be so used as by its use to give it affirmative power. It should not be used to coerce Congress, the law-making power, into the enactment of laws in matter and form which it does not of its own volition prefer. To ascer-

tain what the design and extent of this power is, it must be considered in the light of contemporaneous history and in connection with the other parts of the Constitution.

Mr. Madison said in the convention of 1787:

Instead, therefore, contenting ourselves with laying down the theory in the Constitution that each department ought to be separate and distinct, it was proposed to add a defensive power to each which should maintain the theory in practice. In so doing we did not blend the departments together.

Mr. Mason said in the convention:

We are introducing a new principle into our system, and not necessary, as in the British government, where the executive has greater rights to defend.

Mr. Gerry said in the convention:

The object he conceived of the revisionary power was merely to secure the executive department against legislative encroachment.

From these extracts of the views of leading members of the convention of 1787 it is clear that the veto power was not given to the President to enable him to control legislation, or indeed influence it, but simply as a means of protecting his office in the rightful possession and use of the prerogatives specifically granted in the letter of the Constitution.

Mr. Hamilton thought that the President would rarely use the power. He said "that the King of Great Britain had not exerted his negative since the Revolution."

Mr. Wilson "thought there was no danger of the power being too much exercised." He believed, as others did, "that this power would seldom be used."

Mr. Hamilton said in the seventy-third number of the Federalist:

The primary inducement to conferring the power in question upon the Executive is to enable him to defend himself.

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If a magistrate so powerful and so well fortified as a British monarch would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican. It is evident that there would be greater danger of his not using his power when necessary than of his using it too often or too much.

The frequent use made of the veto in these times is very inconsistent with the anticipations of the sages who made the Constitution.

President Harrison in his inaugural address in March, 1841, said the veto was "to be used only, first, to protect the Constitution from violation; secondly, the people from the effects of hasty legislation where their will has probably been disregarded or not well understood; and, thirdly, to prevent the effects of combination violative of the rights of minorities."

Can any conscientious man aver that under either one of these heads there is the slightest ground upon which to rest a veto? The Constitution is not violated by the Army bill; it has been maturely considered and elaborately and ably discussed on both sides. There is no combination to oppress a minority; on the contrary, it removes oppression from the necks of the people, the majority and the minority as well.

These were the opinions of some of the framers of the Constitution. They considered that the Executive was only a ministerial officer, without any affirmative powers other than those purely executive, and that it was necessary to arm him with a weapon of self-defense against the growing tendencies of legislative encroachments. It was given him to protect the Constitution, to protect his own constitutional prerogatives and those of the judiciary, and to prevent for the time being hasty and inconsiderate legislation. There was no thought in the convention of 1787 of bestowing upon the Executive any legislative or judicial powers. Now, if he has the unqualified right to veto any bill without reference to the Constitution, then is he a co-ordinate part of the legislative power; for with such immense power as that in his hands he can block the wheels of Government and destroy its organization, or force the Legislature to enact his imperial decrees. Was such dictatorial power as that given to him?

The Constitution must be consistent with itself; it must not be self-contradictory or provide for its own destruction. It has, then, made it the duty of Congress to perform quite a number of duties which it has and can do in the form of bills and joint resolutions, any or all of which the President can veto, although by so doing the Government would die. Would not the exercise of the veto under such circumstances be a manifest and unpardonable abuse of power? For instance, it is made the duty of Congress, article 1, section 8, to lay and collect taxes, duties, imports, and excises; to pay the debts and provide for the common defense and general welfare of the United States; to borrow money on the credit of the United States; to coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures; to establish post-offices and post-roads; to declare war, raise and support armies and navies; and many other absolute mandatory powers are conferred upon Congress. Will it be contended that the President has the constitutional power to veto any of these constitutional mandates which Congress in the discharge of its sworn duty enacts?

Can the President prevent Congress by a legitimate and constitutional use of the veto from passing a bill to lay and collect taxes, provided they are uniform, with which to "pay the debts and provide for the common defense and general welfare?" Can he use it constitutionally to prevent the establishment of a uniform rule of naturalization, to coin money, regulate the value thereof, and fix the standard of weights and measures, to establish post-offices and post-roads, declare war, raise and support armies, &c.? If he can constitutionally use his veto to defeat any of these powers of Congress, truly he is a co-ordinate branch of the legislative department and the Constitution is a bundle of incongruities and self-contradictions, a mere nullity.

If the veto is thus unqualified, with one man in either House over one-third of that House, the President and that one-third and one member may combine and overthrow the Government. Truly they may starve it to death, just as the President and the minority in either House of Congress may now defeat the appropriation bills which will be passed by democratic votes for the support of the Army. Who is to judge of what the Army needs, the majority or the minority?

It is plain that, as the Constitution does not provide for its own destruction, this veto power must, in the light of the Constitution itself, be intended simply to enable the Executive to protect his plain written prerogatives and to interpose for the time, until reason shall have time to act, against any hasty or inconsiderate action. To invest it with greater power is to make the President a mere autocrat and Congress a simple clerical corps to register his imperial decrees. For if nothing is to be a law until his whims or wishes are consulted, then of course Congress, in its humiliation and self-abnegation, must ascertain his will and enact it, else the Government stops. Have we come to this? What discretion has Congress if this is the construction of the extent and design of the veto power?

Why was the legislative department declared to be a separate and distinct department and having its duties assigned to it? Suppose a weak or a treacherous man should be elected President of the United States, and suppose that he is seconded in the Senate by twenty-seven Senators, one more than one-third of that body, shall I be told that the theory of our Government justifies as a constitutional act one that blocks the wheels of the Government through the obstinacy of those twenty-seven Senators in conjunction and in conspiracy with the President in sustaining his veto, even though that veto starves the Government to death? The President only vetoes and the twenty-seven Senators sustain his veto, all fair on its face, all in conformity to the outward forms of the Constitution; and yet this action contains the seeds of death—the Government must die under it and by it! Shall I be told that our fathers ever intended such a use of the veto as that, and that the President who would use it thus would be blameless; nay, that his authority to so use it must not be questioned? Congress could pass an act, regular in every respect, ceding every foot of the Territories to a foreign power, but it would be a shameless breach of our trusts. Is not the President responsible for the use of the veto contrary to the spirit of the Constitution itself as shown by the testimony of the fathers?

When Congress complies with its duty in providing supplies for the Army, and couples with it the declaration that the troops shall not be used at the polls, it is no violation of the prerogatives of the President either as to the matter of the legislation, as already stated, nor is it as to the form, for each House has the right to determine its own rules of proceeding. Rule 120 is one of the rules of the House. Under that rule this legislation will be perfected, presented, and passed. Upon what ground can it be claimed that our action has not been constitutional?

Would any one be so bold as to claim that a veto would be justified under the Constitution upon the plea of uniting the legislation with an appropriation bill, when the rules of the House sustains such a course? To contend that the President has the right to use the veto under such circumstances is to deny the very terms of the Constitution itself. It is clear that he can only exercise the veto in defense of his own prerogatives and of the Constitution, and to arrest temporarily inconsiderate legislation.

But let us examine for a moment whether there is any ground as to the method of passing the bill to justify a veto. Will the President veto on account of the method of the bill—that is, because this restriction upon the use of the Army is embodied in an appropriation bill? The clause is germane to the bill, and is not a rider; but if it was the latter the House had the right to put it there. Under the Constitution, article 1, section 5, each House may determine the rules of its own proceedings. Now, the House of Representatives has adopted Rule 120, which authorizes the ingrafting upon the appropriation bill the legislation proposed. This, then, is the method or manner of proceeding—the rule, if you please, which the House chooses in the exercise of its constitutional right to adopt. The President, then, with proper respect for the constitutional rights of the House of Representatives, has no right to object to signing the bill simply because of the form in which it may be presented to him. It may be a bad rule, it may be injudicious and perplexing; but it is constitutional. The House had the right to make the rule, and did so, and the President nor any other power has the right to question the manner of proceeding.

The usage of the House in tacking additional or extraneous matter to appropriation bills has been long practiced and is now well established, having been done and acquiesced in by all political parties for half a century. Some of the very measures which we shall seek to repeal through the legislative appropriation bill were enacted upon appropriation bills, and supported by some of the distinguished names now opposing their repeal because it is sought to be done by ingraftment upon an appropriation bill. One notable instance is the name of Rutherford B. Hayes. The catalogue of important measures that

have found their way into the statute-books through the avennes of appropriation bills is a long and interesting one. It is not necessary to refer in detail to it, as the country well understands that fact, and no one is mendacious enough to deny it.

Shall Mr. Hayes undertake to reform the practices of Congress with which he has no constitutional right to interfere? What has he to do with the rules of either House of Congress? And if he has, as I trust he will show, a proper respect for the example of his own party and for his own personal consistency he would not seek such a high-handed act of executive usurpation to rebuke Congress. Mr. Hayes voted to attach a proviso to an appropriation bill, while he was a member of the House, to rob President Johnson of his constitutional prerogatives. He stands by this vote to-day. I trust the recollection of that vote will not fade from his memory when he comes to consider either bill. During the pendency of the Army appropriation bill in this House in the Thirty-fourth Congress, Mr. Sherman, now a member of Mr. Hayes's Cabinet, offered the following amendment to that bill:

Provided nevertheless, That no part of the military force of the United States herein provided for shall be employed in aid of the enforcement of the enactments of the alleged Legislative Assembly of the Territory of Kansas, recently assembled at Shawnee Mission, until Congress shall have enacted either that it was or was not a valid Legislative Assembly, chosen in conformity with the organic law by the people of said Territory: *And provided*, That until Congress shall have passed on the validity of the said Legislative Assembly of Kansas it shall be the duty of the President to use the military force in said Territory to preserve the peace, suppress insurrection, repel invasion, and protect persons and property therein, and upon the national highways in the State of Missouri, from unlawful seizures and searches: *And be it further provided*, That the President is required to disarm the present organization of the Territory of Kansas, and recall all the United States arms therein distributed, and to prevent armed men from going into said Territory to disturb the public peace or aid in the enforcement or resistance of real or pretended laws.

This amendment to the Army appropriation bill was supported by the entire republican party in the House of Representatives at that time. Can it be possible that that Cabinet officer would now advise so grave a step by the President as to veto a supply bill for the support of the Army because it contains the condition or restriction that the Army shall not be allowed to intimidate voters and control elections? Has the pride of consistency and fair dealing fled to brutish beasts and have men lost their reason? Had this bill as amended in the House have passed the Senate and been vetoed by President Pierce, the indignation of the republican party would have known no bounds.

Charles I yielded to the Commons the right of the Commons to tack to money bills any great muniment of liberty demanded by them.

William III in 1692 vetoed the triennial bill. Parliament tacked it to a supply bill and it became a law.

The veto power is a negative power simply, and any use of it which subverts the affirmative powers of the Senate and House as the law-making power is an unconstitutional use of it, because it renders nugatory and practically null and void the plain provision of the Constitution which vests the Senate and House alone with all legislative powers. The Executive can therefore have no legislative function, and can only use the veto to protect the Constitution and those prerogatives which are affirmatively conferred in the Constitution, and to prevent a want of deliberation. Hence the President has no right to exercise a prerogative which prevents rightful and constitutional legislation, for if he does he assumes legislative powers. It is audacious to say that he is coerced because Congress chooses deliberately to pass laws in conformity with the Constitution and in the manner justified by the rules of each House. It is worse than audacious; it is dangerous and destructive of liberty.

There is nothing in the powers of the council of the Empire of Russia that is more dependent upon the *ipse dixit* of the emperor, who appoints the councilmen for life, than in the practice which this theory of the President being clothed with legislative power will establish; for he and his twenty-seven Senators block up and clog every wheel of Government until the majority in both Houses shall succumb to his imperial policy. Even if every Representative of the people had voted for the Army bill, the President, together with one more than one-third of the Senate, could dictate any terms, demand any conditions, or write the fatal words "I forbid," and supplies to the Army must cease unless the whole House and two-thirds but one of the Senate will bend their suppliant knees to his majesty and his twenty-seven Senators.

In England the King, Lords, and Commons compose the Parliament; with us the Senate and House of Representatives compose the Congress. Shall the constitutional functions of Congress be arrested and destroyed by the indiscreet and unjustifiable use of another constitutional function? That must follow if the veto power is as unlimited and unqualified as I have shown it to be in the case I have already put of the collusion of the Executive with twenty-seven Senators. Such a theory is the national suicide of the Republic and the installation of autocratic power with a partisan council of twenty-seven whose interests and inclinations alike might lead them to betray the people and aggrandize themselves. With power invested in the President to control the polls by troops or by a horde of supervisors and deputy marshals, such a *régime* might be indefinitely perpetuated and every vestige of national and individual power and liberty usurped and overthrown. Such a conclusion legitimately follows this unwarranted assumption of an unqualified veto, which clothes the President with quasi or negative legislative power, except in the plain defense of his own prerogatives and of the other grants of the Constitution, should Congress rashly venture upon an encroachment of any of them.

Suppose Congress, in order to provide for the public defense and general welfare, should pass a bill to collect revenue by an *ad valorem* rate of duty and the President should prefer to collect by direct capitation tax, and should veto the revenue bill and intimate to Congress that the public defense and general welfare of the nation could not be provided for unless his method of a direct tax is resorted to? Will any one say that such a use of the veto is not contrary to the genius, spirit, and plain teachings of the Constitution and of the convention which made it? And yet he might just as well say that his prerogatives are trenched upon and that the Constitution is violated in that instance, and that he is therefore authorized to veto the same as he would be in the case of the Army bill. The repeal of this authority to keep troops at the polls affects no Executive right and in no manner violates any grant of the Constitution, but it is in conformity with the attainment of the true principles of American institutions that the civil should be superior to the military power, and that elections be free and unintimidated by military interference. No matter if the Constitution does invest the House of Representatives with the sole power of originating revenue bills, and Congress, in pursuance of that power, passes a revenue act, the theory that the President is independent of the numerous and salutary restraints laid down in the Constitution would authorize him to veto the measure. If so, what becomes of the rights of the legislative department and its powers? All centralizes in the one-man power.

The Constitution, article 1, section 7, vests the House of Representatives with the sole power of originating revenue bills, and the practice derived by analogy from this power is universal for the House to originate appropriation bills. In other words, the people's Representatives lay the taxes and hold the purse-strings. Who, then, shall say that Congress may not place any constitutional restriction it chooses, or impose any condition it wishes upon the use of the money it collects from the pockets of the people and hands over to the Executive? If, then, the Congress votes appropriations and couples those appropriations with certain conditions that protect the ballot-box from the interference of soldiers on election days and otherwise secures the citizen in the exercise of a free ballot, and the President on account of those safeguards to the rights of the people vetoes the bill and refuses and cuts off the means of supporting the Government, who, I ask, is responsible? Who bars the doors of the Treasury against the needs of the Government?

It is no argument to say that this veto power is classed among the legislative powers in the Constitution, and that therefore it is invested with legislative power. Other powers are included among the same class which are not legislative at all. For instance among this group of powers is found the power vested solely in the Senate to try impeachments, having nothing whatever to do with legislation. There are other exceptional powers therein enumerated which are not legislative at all. As, for instance, the House has the sole power of impeachment. Suppose the democratic majority in the Senate should exercise their constitutional power to defeat instead of confirm the executive appointments of the civil officers of this Government, would not the arbitrary use of that power, although perhaps in conformity with the forms of the Constitution, be directly opposed to its spirit and genius, and would it not be a treasonable mode of blocking the official machinery of the Government? Could such a course be a legitimate and proper use of a constitutional function? Although each Senator must answer for himself, and has the right to vote to confirm or reject all nominations, a right secured in the Constitution, yet will any one say that it is admissible to exercise that right in such a manner as to defeat the exercise of the affirmative rights of the President to make his own nominations to fill the various civil offices of the Government, and therefore by using their power in their own way they may succeed in negativing or vetoing the will of the President guaranteed by express grant in the Constitution, and thus force him to make nominations that do not suit him, but which have to be made to suit those partisan Senators.

Would not the veto of the Army bill by the President be just such a flagrant outrage upon Congress as that recalcitrant course of the Senators would be upon the President? There is no difference in principle. The only difference is in the quality of the affront. The majesty of the people represented by Congress is not inferior to the majesty of a man who fell over one million white votes below a majority in the last presidential election and who obtained his seat through returning boards and electoral commissions by a vote of 8 to 7. I do not impeach his tenure, it was made lawful by the act of Congress, but many an act conceived in fraud and brought forth in iniquity has stood the test of opposition and been held legal and binding; so is this legal and binding. Peace, order, and law demand it! But for the devotion of the democratic party to these noble ends, but for its self-sacrifice and patriotic patience under wrong and fraud, where would the peace of this country be to-day?

When General Grant was first nominated for President, although the terror of his name had shaken the continent and his fame had traversed the confines of civilization, yet when he came to consider the majesty of the people and that he was about to become their Chief Magistrate he properly said that he had no policy of his own to interpose against the will of the people.

Do our friends on the other side prefer the destruction of the Army,

if they cannot be allowed to have bayonets at the polls? That is the issue. The law of 1795, section 788, reads thus:

The marshals and their deputies shall have, in each State, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof.

Here the marshals have all power to execute the laws of the United States. That law is not repealed. The laws of the United States can be enforced anywhere and at any time, on the day of elections at the polls or at any other time or place. The plea that the bill paralyzes the civil arm of the Government will not stand.

The Supreme Court in the case of the United States *vs.* Cruikshank *et al.* (2 Otto, 542) uses this language:

The duty of protecting all its citizens in the enjoyment of equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. The power of the National Government is limited to the enforcement of this guarantee.

If New York or any other State fails to protect the citizen under this decision of the Supreme Court, the United States could interfere with its marshals, and not otherwise. But gentlemen not only want the marshals to interfere in the protection of the peace of the State, but want the Army to help them.

Nor is that the special trouble, although it is made a pretext. The whole truth is that the people must not be allowed to vote for whom they please unless they please to vote for republicans. The republicans must be kept in power; that is the grand *finale* of the whole business. This law and others which the legislative bill seeks to repeal constitute the legal armor behind which it is hoped and intended, as I believe, to again defraud the people of their election for President in 1880. A *plebiscit* after the manner of Napoleon instead of an old-fashioned free election is what the republican leaders want. Will Mr. Hayes lend the power of his great office to effectuate such tyrannical results by preventing the repeal of such obnoxious laws?

The laws of the United States, prior to the act of 1861, forbade the use of troops, under heavy penalties, at the polls. The act of 1861 repealed those laws and authorized the employment of the Army in the performance of police duty on the day of election and at the voting precincts. The law of 1865 repealed the act of 1861, with two solitary features excepted.

Section 2002 of the Revised Statutes reads as follows:

SEC. 2002. No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.

That section of the Revised Statutes makes the following two exceptions, which were not repealed of the law of 1861, to wit: "Unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls." The Army bill repeals one of these exceptions by striking out these words, "or to keep the peace at the polls."

All that has been done in the bill was to repeal the act of 1865, which authorized the employment of the Army to keep the peace at the polls. How does the striking out of these words from the statutes in any manner affect the civil authorities from exercising all of the powers they possess now? The arm of the civil authorities would be as potent with these words repealed as it is now.

Do gentlemen demand that marshals shall prevent breaches of the peace at the polls? Do they demand that they shall prevent the violation of a law passed by a State? Is it the duty of the United States or of the State to preserve the peace in a State, whether at an election precinct or elsewhere? Do gentlemen demand that the United States marshals shall prevent the violation of a law Congress has no power to pass? The State of New York and other States do not allow process to be served on the day of election. That day is observed as a holiday. Process is not allowed to be served on Sundays, and most States exempt the days of election, because that day should be consecrated to free government, and every citizen should be allowed without fear to voice his influence and authority in molding the laws under which he is to live.

This is a momentous issue. If it is vetoed it will be the first veto in this country of a bill repealing a law! And such a law! A law that is unconstitutional and un-American! A law that is abhorrent to all ideas of free government! And yet the bill that sets the people free at the polls to vote unintimidated and unawed by bayonets in the hands of mailed soldiers is threatened on this floor with the fate of the executive frown and to die by the hand of one single man, and with it must fall the means of supporting the Army.

Had the framers of the Constitution anticipated, could they have been able to foresee the immense patronage and power which has gathered around the executive office in the space of less than one hundred years, they would not have felt that he needed the veto power even for his own defense. It is true that Benjamin Franklin and one or two others thought then that he ought not to be clothed with any such authority, but they were overruled by the almost unanimous judgment of the convention purely and solely upon the ground that his office, as just stated, was only ministerial, and was in far greater danger of being overturned by the advancing popularity of the legislative department, which would swell in proportion as population increased and as new States were carved out and added to the sisterhood. But the sagacious mind of Franklin doubtless saw the immense army of office-holders and dependents hanging like so many barnacles to the ship of state in one sense, and yet in another by their energy and official management and intrigue capable of producing great results in concentrating power in the hands of the Executive, and at the same time disbursing annually hundreds of millions of dollars, all tending to build up the executive office into colossal proportions of power and influence. Under these circumstances, and panoplied with all these elements of popular control, I do not wonder that the liberty-loving old Quaker philosopher, seeing all these things in the mind's eye as they are now transpiring, should have opposed any aggrandizement of the executive office by investing it with the veto power.

The power to coin money is one of the specifically named grants of power in the Constitution that is conferred upon Congress. But when Congress discharges that constitutional behest as it did a year ago in restoring the silver dollar as before alluded to, being purely an economic question, and the President saw fit to hurl his autocratic fiat in the teeth of the laboring, industrial, and business interests of the country, it is, I submit, time for the people whose Government this is to inquire if it would not be prudent to look around and see if they had not better throw some more restraints upon this one-man power before an emergency shall arise when it will be too late to rescue the sacred interests of the people from imminent jeopardy?

Sir, the soil of American politics is not suited to such an exotic as the one-man power. It will do where kings and emperors reign, but in free America the people are sovereign. But I should except the British government from this remark as no veto has occured I believe since William III vetoed the triennial bill in 1692. No instance for nearly two hundred years of a veto has occurred in England, from which country we borrowed this feature of our Constitution. And no instance of a veto of a bill restoring the people to their lost rights has ever occurred in England. Should it occur it will be the first in this country, and may it in Heaven's name and in the name of constitutional freedom, and in the name of the American Republic, be the last!

Starting out with brave words of conciliation upon his lips, and with still braver deeds to signalize the first pages of his administration's history, calling upon his head the fierce and vindictive fire of his unsuccessful and revengeful foes in his own political household, I must confess that I would be amazed to see the President leap at a bound into the partisan arena,

Waving the torch of the furies.

I have no objection to urge against any one for belonging to a party; but the President having played the roll of pacificator I submit there is no justifiable cause for a somersault into the arms of the extreme men of his party, and I trust he will pause before he takes the leap. Complain of coercion! Here will be an illustration of the most positive coercion. Should he obey the behests of his party the President will have been literally driven by the extreme men of his party into an abandonment of his former position of reconciliation and justice toward the Southern States as foreshadowed in his inaugural and subsequently followed in the course of the administration toward the States of South Carolina, Florida, and Louisiana, to take shelter in the camp of the stalwarts of his party. In such an inglorious surrender he will have dragged along his patriotic inaugural and with it the Constitution of this country to the feet of party subserviency. What would a veto mean? It would mean that the President and the republicans demand that a minority in both branches of Congress shall determine the rules of proceedings of Congress, and shall also determine what measures shall be adopted; it would mean that they prefer to have no Army unless they can use that Army with fixed bayonets to terrorize and drive peaceable and unarmed citizens from the polls.

Who are the revolutionists—the men who vote for supplies or the men who vote against supplies? Ah! Who are they? The unpatriotic attempt to deceive the northern people by false and malicious misrepresentations of the sentiments and position of the southern people in reference to their obligations to the Government of the United States should be exposed. Where is the evidence of southern disloyalty? Since the South "dropped from her nerveless grasp the shattered spear" of battle, history does not furnish an instance of a conquered people who have proved more loyal or honorable in the discharge of obligations. Secession is dead. Slavery is dead. The thirteenth, fourteenth, and fifteenth amendments to the Constitution are admitted freely and supported without complaint. The horrors of reconstruction were borne without complaint. Bankruptcy entailed by the war and by carpet-bag rule has been patiently endured for long and weary years. The domination of the military over the civil authorities has been submitted to and only resisted under forms of law and in accordance with constitutional processes.

Let the record for economy and retrenchment in this House and the prudent and conservative course of southern members generally stand up for us before our accusers. I deny the unjust charge that this proceeding is revolutionary. Revolution means a political revolt—the overturning of a government. What democrat has uttered a word against the authority of the Government? Who intimates any doubt or dissent to the legal authority of the present incumbent of the executive chair, although the world knows that he was not elected by the people, and that another man was elected President of the United States? I trust that it will not be regarded as revolutionary to oppose the republican party and its unjust policies and laws. The Government of the United States is one thing and the republican party is quite another. It is the maladministration by the republican

party of the Government against which the democratic majorities in Congress, representing a million majority of the white voters in this country, are warring.

Europe takes our 4 per cent. loan with avidity, and laughs at the cry of revolution by the hypocritical alarmists, who are only trying to deceive the people and draw their attention away from their own bad record and worse principles by hurling in their faces a false issue.

There is one kind of revolution—it is the great popular will that has been for years and is still revolving the republican party out of power and revolving the democratic party into power, not through the agencies of bayonets at elections, or by a horde of supervisors and deputy marshals armed with the power to arrest without due process of law any persons they please and to imprison them without trial. Oh, no! not by cartridge-boxes, but by free and honest ballot-boxes. A revolution that will bring peace, equality, and prosperity to the doors of the masses of the people. We are for law, order, and the Constitution. We are for peace, the freest toleration of opinion, and equal rights for all. The Southern States invite emigration into their borders, and have no sectional, political, or religious test to offer. The southern people are asking no special favors. We have no interests that are not common with the balance of the Union. Let us not quarrel over false issues. Let us take hold of living ones. Let us reform the currency and taxation laws, that thrift may follow labor and prosperity crown the people.

The most discouraging political event of the times is the concerted and persistent effort of the republican party to doubt, disparage, falsify, and accuse the patriotism of the southern people. It seems that nothing that we can do or say will satisfy them of our sincerity and of our devotion to the welfare and prosperity of this Union. As all governments, unless pinned together by bayonets by the order of a military despot, must rest upon the affections and consent of the people, what would a foreigner think of the hold that this Union has upon the people of one-third of these States if they were compelled to judge of it through the representations contained in the speeches of our republican friends. Strangers, of course, would feel and believe that the southern people were as sullen and as hostile to the Union as Ireland is to England or Hungary to Austria or Poland to Russia. But to the members of this Congress, to their intelligent constituents, how supremely ridiculous this slanderous charge appears!

There is not a man of my acquaintance in any Southern State—and I am personally acquainted with thousands in those States—who carries in his bosom any lingering hostility to this Union. Why, then, stir up bad blood between the South and the North? Really there is now no political South. We have no peculiar interest that the North has not got in common. What is to be the effect of this ceaseless abuse and constant detraction? I fear that it will end in dispiriting our people and that material decay will follow. A people less brave, energetic, and determined would become dispirited with this ceaseless war made upon them and would naturally fall into general decadence. Physical decay would inevitably follow any successful effort which shall cause the laboring classes to become dissatisfied with their condition and to seek other and distant homes. The soil and climate of the Southern States possess natural advantages unparalleled by any country beneath the sun. Let us glance at the products of these States, possessing a population of about fourteen millions of people.

Alabama: crops of 1877, (corn, wheat, rye, oats, barley, buckwheat, potatoes, and hay,) $18,846,000.

Arkansas: crop of 1877, as above, value, $12,538,800.

Delaware: crop of 1877, as above, value, $4,262,875.

Florida: crop of 1877, as above, value, $2,298,500.

Georgia: crop of 1877, as above, value, $24,193,800.

Kentucky: crop of 1877, as above, value, $33,725,200.

Louisiana: crop of 1877, as above, value, $7,395,000. (Not all reported.)

Mississippi: crop of 1877, as above, value, $14,808,250.

Maryland: crop of 1877, as above, value, $21,646,550.

Missouri: crop of 1877, as above, value, $63,596,600.

North Carolina: crop of 1877, as above, value, $20,064,110.

South Carolina: crop of 1877, as above, value, $11,745,060.

Tennessee: crop of 1877, as above, value, $36,942,660.

Texas: crop of 1877, as above, value, $30,212,250.

Virginia: crop of 1877, as above, value, $26,641,800.

West Virginia: crop of 1877, as above, value, $13,647,850.

Value of cotton crop of 1878, as estimated by the Department of Agriculture, (say 5,200,000 bales,) for all the Southern States, $220,000,000.

Value of tobacco crop of 1870, (no full statistics given of a later date,) 262,735,241 pounds, (say four cents,) $10,509,409.

Value of cotton manufactures of Southern States in 1875, (estimated, 67,733,140 pounds)—no value given.

Value of farm animals not given in any census.

These statistics show the vast interests at stake in dealing with the labor problem. It is true that the larger part of these products are the fruits of white labor, but the colored labor constitutes an important feature in the grand aggregate. Strike down at one blow one-half of the value of the cotton crop, and the exchanges of this country would be seriously against us. It would affect our commerce and our financial relations with foreign countries to an almost ruinous extent.

Destroy if you please the energy and wealth and civilization of these people, no matter by what agency, and see what injury has been done to the Northern and Eastern States. The South is to the North and East one of their best markets for their manufactures. Drive away or entice away our labor, cripple our productions in whatever way, and of course our capacity for consumption is proportionately diminished and the sales and profits of the manufacturer are in like manner decreased. This, too, will at once produce stagnation in business in the manufacturing centers of the Union, and labor there must go unrewarded or unemployed, perhaps. These are questions of political economy which the people of the North would do well to consider when they listen to political harangues against the solid South and endeavor to break down their productions by deranging their labor system. Sectionalism is a crime against honest labor; it is a crime against the Government which we all ought to revere and love; it is a crime against liberty and civilization.

Can we not all quit talking about the war, its results, the political South, and address ourselves to material and living issues in which all the people are interested? The people are thinking about their material condition. Poverty stares millions of them in the face. Our system of financial and revenue laws have been and are yet greatly at fault, their tendency is to aggrandize the wealth of those already rich and who live by profits and per cents. Let us go about reforming them now before this session closes. The producer and the artisan are made the victims of usurious commissions and monopolistic impositions which consume the products of their labor and leave them a bare support for themselves and their dependent families. Added to these drawbacks they are compelled to yield of their scanty earnings a forced tribute to the support of the Government altogether out of proportion to the advantages and protection which some of its unjust and unequal laws afford to the more fortunate citizens who bask in the favor of class legislation, and who are protected thereby in the enjoyment of the prosperity and advantages of unblushing and gigantic monopolies which openly defy public opinion and laugh at the complaints of an overburdened and tax-ridden people.

And now when the people by overwhelming majorities proclaim in favor of a different system of revenue laws and a change in our financial policy, are they still to be subjected as American voters to the surveillance of armed soldiers or janizaries to prevent the free expression of their views upon these great issues and thereby perpetuate the republican party in power? And will it be done through the unwarranted and unconstitutional use of a presidential veto? Patriotism forbid it!

Legislative, etc., appropriation bill.

SPEECH OF HON. J. A. McKENZIE,

OF KENTUCKY,

IN THE HOUSE OF REPRESENTATIVES,

Saturday, April 19, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. McKENZIE said:

Mr. CHAIRMAN: I should not have attempted to participate in this discussion, worn threadbare as it is, but from the fact that upon a question so important, one involving the dearest rights of citizenship, and one which is occupying the attention of the great body of the people from one extremity of the Union to the other, I felt unwilling to simply cast my vote without giving my reasons why I should support the pending bill. This is a bill making the ordinary appropriations for the support of the legislative, executive, and judicial branches of the Government for the year ending June 30, 1880, with provisions which propose the repeal of certain sections of the Revised Statutes known as the jurors' test oath and the Federal election laws.

The laws which we propose to repeal relating to supervisors of elections and deputy marshals, have been so well summarized by the gentleman from Ohio, [Mr. DICKEY,] that I beg leave to read from the speech of that gentleman, made April 18, 1879. He said:

Let me briefly summarize these laws.

First. That two citizens may be appointed by the judge of the circuit court of the United States, to be known as supervisors of elections.

Second. These supervisors are required to attend at all times and places fixed for the registration of voters who would be entitled to vote for a Representative or Delegate in Congress; and to challenge any person offering to register, and to personally inspect and scrutinize such registry.

Third. These supervisors are also required to attend at all times and places for the holding elections of Representatives or Delegates in Congress; and to remain and personally inspect and scrutinize, on the day of election, the manner in which the voting is done, and the way and method in which the poll-books, tallies, &c., are kept.

Fourth. They are required to personally scrutinize, count, and canvass each ballot cast in their election district or voting precinct.

Fifth. They are directed, on the day of election, to take, occupy, and remain in such position, whether before or behind the ballot-boxes, as will best enable them to see each person offering to vote or register; and at the closing of the polls they are required to place themselves in such position, in relation to the ballot-boxes,

for the purpose of canvassing the ballots, and there remain until the work is complete.

Sixth. Whenever an election, at which Representatives or Delegates in Congress are to be chosen, is held in any city of twenty thousand inhabitants or upward, the marshal for the district shall, on application of two citizens, appoint any number of special deputy marshals to assist the supervisors.

Seventh. The marshal, his general deputies and special deputies, are empowered to arrest and take into custody any person without process, and carry the person so arrested before a commissioner, judge, or court of the United States for examination according to law in case of crimes against the United States.

Eighth. In addition, there is the necessary machinery, powers, fees, per diem, &c., for carrying into effect those provisions.

These laws originated in the dire necessities of the republican party at a time when it was evident that the intelligent and patriotic people of the country had become weary of its long domination, its oppressions, and its misrule, and had determined, unless prevented by the exercise of arbitrary power, to effect a thorough change in the administration of their public affairs. The fact is, they were devised by a local republican organization, the Union League Club of the city of New York, and were carried through the committees of Congress mainly if not entirely through the efforts of that organization and its hired agents and attorneys.

The testimony taken before the Committee of Expenditures in the Department of Justice, found in Report No. 800, first session, Forty-fourth Congress, shows clearly that the Union League Club for the purpose of promoting the success of the republican party, appointed a committee, employed counsel, and expended large sums of money in collecting such facts as would induce a republican Congress to pass these laws. In proof of this let me read the following extracts from the testimony of Samuel J. Glassey, one of the attorneys employed by that club, and the testimony of John I. Davenport, who was immediately after the passage of the laws appointed chief supervisor of New York, and who yet holds that position—holding at the same time two other lucrative Federal positions.

Davenport states in his testimony, page 130, part 2, as follows:

By the CHAIRMAN:

Question. In the first part of your statement you spoke of certain laws that you aided in getting through Congress?

Answer. Yes, sir.

Q. Be kind enough to state again, succinctly and specifically, what laws they were.

A. They were the act of May 3, 1870, entitled "An act to enforce the rights of citizens to vote in the several States of this Union, and for other purposes," chapter 114 of the Statutes at Large, volume 16. The other act is chapter 254, approved July 14, 1870, being "An act to amend the naturalization laws, and to punish crimes against the same, and for other purposes." The other act is the act of February 28, 1871, chapter 99, being "An act to amend an act approved May 31, 1870, 'An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes.'" And this brings up another matter that cost me about $80 for telegraphing. I had the whole law telegraphed me from Washington to New York. They were getting it all mixed up in the conference committee, and I just sat down in the telegraph office and tried to get it straightened out.

Q. Sat down in the telegraph office in New York?

A. Yes, sir; there was no time for me to come on here.

Q. Who was it telegraphed to you?

A. They telegraphed the law. I telegraphed to the Times correspondent to telegraph the law to me. There was no time to get back, and I saw by the papers they were getting it into a shape that would defeat the intent, and that they didn't see where it would land. It was in one of the appropriation bills. Chapter 139, in volume 17 of the Statutes at Large, is a short act amending again the act of May 30, 1870.

Q. Is that the one they telegraphed you about?

A. No, sir. Then you will find in chapter 415 of the seventeenth volume of the statutes, in the bill making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1873, and for other purposes, under the head of judiciary, that the act of February 28, 1871, is amended.

Q. Was that done through your influence?

A. Yes, sir; they telegraphed all of this.

Q. That is under the head of judiciary?

A. Yes, sir; all that is under the head of judiciary that relates to this matter, amendatory of that act of February 28, 1871. I could give you the history of that whole thing through the conference committees. I think there were three conference committees on that.

Q. On that particular amendment?

A. Yes, sir; there was a long fight.

Q. And then somebody telegraphed to you?

A. No, sir; I telegraphed. I saw in the morning papers that the thing was not right, and I telegraphed to telegraph me the bill so that I might know whether the papers were correct, or whether the bill was right and the papers were wrong. Then I got it; I saw the difficulty, and I sat down and telegraphed to the different members of the conference committees.

In regard to the passage of these laws, Mr. Samuel J. Glassy swears, page 185, part 2:

By Mr. COCHRANE:

Question. State what you know, without going too much into detail.

Answer. Two acts of Congress, passed during the session of 1870, one in May and the other in July, were the result of a comparison of some eight or ten bills which the different members of the two different Houses had prepared and introduced on their own motion with the bills drafted to accomplish the same object. Mr. Davenport, in this same employment, acting under the directions of the club committee, and especially of myself and General Foster, was sent to Washington, his expenses being paid and he receiving compensation for his services, to attend to the urging of these bills. In the winter of 1870 and 1871 the club resolved that some further legislation was necessary on the subject, and in December of 1870 or January of 1871 Mr. Davenport went to Washington again, and while he was there this act of February 28, 1871, was passed. The concoction of that bill I had very little to do with. Some part of it was drafted by Mr. Davenport. I very distinctly remember reading over the section relating to fees. The two previous acts of Congress, those passed in May, 1870, and July, 1870, I knew all about.

Q. What did he say to you about that section in reference to fees?

A. That if he could get that clause in it would enable him to make $15,000 or $20,000 at the time of every general election. It is proper to say that these first two bills that were passed in 1870 were very carefully considered, not only by General Foster and myself, but by several prominent lawyers who were members of the club, and several members of Congress and other persons of eminence. At the very outset of our consideration of these remedial measures, which we deemed necessary, the question how far Congress had any power under the Constitution to interfere with elections was very carefully considered; and all the lawyers I remember as having anything to do or say about it were of the opinion that congressional interference must be confined strictly to the election of the members of the House of Representatives, and beyond that we could not go.

So much in brief for the origin of these laws we propose to repeal. As to the intolerable and unjust manner in which they have been executed, the history of the elections of 1874, 1876, and 1878, if it could be fully recited, would show that the power conferred by them upon the subordinate officers of the Government has been most outrageously perverted and abused for the worst partisan purposes. I have no time to go fully into that matter, nor is it necessary to do so, as the records of this body contain abundant evidence in the form of committee reports and otherwise of the truth of my assertion. When eight thousand legally qualified voters can be disfranchised in a single city at a single election as was done in the city of New York at the last congressional election and no man punished or even prosecuted for the outrage, it is time for the representatives of the people to resort to every constitutional and legal means to abolish this partisan machinery.

My colleague [Mr. CARLISLE] has gone so fully into this matter and has presented it to the House so forcibly that I will be pardoned for reading the following extract from his speech of April 17. He said:

In May, 1878, the chief supervisor of elections in that city caused one of his clerks or assistants to swear to a single complaint against ninety-three hundred persons of foreign birth who held certificates of naturalization issued from the supreme and superior courts in 1868, and on which they had regularly registered and voted at every election since that time. On this complaint the same supervisor of elections, as clerk of the United States court, issued five thousand and four warrants, returnable before himself as commissioner of the United States court! Afterward it seems to have been discovered by this officer that these warrants were illegal by reason of the fact that the complaint contained more than one name, and thereupon they were withdrawn; but immediately afterward he caused twenty-eight hundred more complaints to be made and issued warrants upon them in the same way. Many persons were arrested under this process, and about thirty-four hundred naturalized citizens, in order to escape from this partisan persecution, actually surrendered their papers. Just a few days before the election in November he caused the same clerk or assistant to swear to thirty-two hundred more complaints. They were sworn to in packages, many of them on the Sunday preceding the election, and during the night preceding the election warrants were made out against the persons named in the complaints and placed in the hands of the supervisors of election at the various voting places, to be delivered to the deputy marshals the next morning, in order that they might be executed when the persons named in them should appear for the purpose of voting. Among the instructions given by the chief supervisor to his subordinates was the following:

"In the case of persons who present themselves to vote, where a warrant has been previously issued, you will see that such persons are arrested upon the warrant upon so presenting themselves and before voting."

This instruction was faithfully obeyed, and on the day of election hundreds of naturalized citizens who possessed all the qualifications required by the constitution and laws of the State of New York were arrested at the polls, dragged away by these deputy marshals, and deprived of the right of suffrage. The pretense upon which these outrages were committed was that the records of naturalization kept by the superior court of New York in the year 1868 were defective and that therefore the certificates were void. The truth was that precisely the same kind of record, and no other, had been kept in that court for a period of fifteen years, under the administrations of nineteen different judges of both political parties, the Hon. Edwards Pierrepont, late minister to the court of St. James, being one of them; that between fifty and sixty thousand persons had during that time been naturalized in precisely the same manner as these persecuted men, and many of them had been voting and exercising all the other rights of citizenship without question for twenty years; and that before these arrests were made a State judge, in an able and elaborate opinion, had expressly decided that the record was sufficient and the naturalizations valid. Notwithstanding these facts, about which there can be no dispute, these nine or ten thousand persons who had in good faith procured their papers in 1868 were selected to be the victims of as vile a political persecution as was ever set on foot in the history of any country. Certainly no such crusade against the political rights of any class of citizens was ever before inaugurated in this country, and none ever had less excuse or justification. In some instances the papers of the citizen were seized by these Federal officers when he came to register and were retained until the election was over.

I might refer to the elections in the same city during other years, and to the elections in the city of Philadelphia last year, to show other gross abuses of these statutes by the ignorant and corrupt partisan officers appointed to execute them, but the single illustration already given is sufficient to show that we are justifiable in resorting to any method allowable by the Constitution of the country and the rules of this House to secure their immediate and unconditional repeal.

No such menace to republican liberty and the free exercise of the right of suffrage should be permitted to stand for a day upon the statute-book of the country.

I desire in this connection to say a word as to the cost of this system of supervisors and deputy marshals. I desire the tax-payers of this country to know what they are paying for the luxury of perpetuating the ascendency of the republican party by corrupting the ballot-box and destroying the liberty of the citizen. I find that in 1876 there were 4,863 supervisors and 11,610 deputy marshals, at a cost to the tax-payers of $275,296.70. In 1878 the number was slightly decreased, but the cost still amounted to the sum of $202,291.69. And this enormous outlay of the people's money was made for the purpose of preventing rather than securing an honest vote, for the purpose of perpetuating party ascendency rather than securing a full, free, fair expression of the people's will.

But we are met by the cry from the republican side of this Chamber that it is "revolutionary" to attempt the repeal of these laws by attaching them to a supply bill. And in the face of this cry of revolution from republican leaders in this House, a syndicate of Boston

bankers subscribed for one hundred and fifty millions of the new 4 per cent. Government loan in a single day.

Does this look as though the apprehension of revolution was shared by the money-lenders of the East? Does it look as though the people of New England was in sympathy with the politicians who seek to keep alive the fires of sectional hate by raising the cry that the southern element in Congress was proposing schemes of legislation destructive of public order and popular confidence? No, Mr. Chairman, the democratic party does not mean revolution; it does mean, however, that this infamous, oppressive, partisan legislation shall no longer have a place on our statute-book. Let us see with what grace the cry of revolution comes from the republican party, because, forsooth, the democrats propose to attach extraneous legislation to an appropriation bill. I find by an examination of the tabulated statement prepared by the gentleman from Texas, [Mr. REAGAN,] that from 1862 to 1875, during the whole of which time the republican party controlled both branches of Congress, there were passed three hundred and eighty-four items of legislation upon eighty-four general appropriation bills. Says Mr. REAGAN:

By the deficiency act of March 2, 1867, (section 3, page 470, volume 14 of the laws,) a tax was levied upon gaugeable goods.

By the Army appropriation bill of March 3, 1869, (Statutes at Large, volume 15, page 318,) in the sections from 3 to 7 inclusive, the Army organization is changed or modified.

In the sundry civil appropriation bill of July 15, 1870, section 12 appropriates $225,000 to build a pier in Delaware Bay, and section 13 authorizes the extension of a railroad over it and the free use of it.

In the sundry civil appropriation bill of March 3, 1871, (section 9, volume 16, page 514 of the laws,) provision is made for civil-service reform.

In the consular and diplomatic bill of July 11, 1870, (section 2, volume 16, page 221,) provision was made for Parson Newman's voyage around the globe at public expense, at a salary of $5,000 per year; a pleasure trip for him, but useless to the public.

In the sundry civil appropriation act of March 3, 1873, (volume 17, page 530,) provision is made for extending the laws of the United States to Alaska. In the naval appropriation act of May 23, 1873, (volume 17, page 154,) authority was given to the Secretary of the Navy to sell naval vessels, and in the sundry civil appropriation act of March 3, 1875, (volume 18, page 401,) section 11 authorizes the Secretary of the Treasury to give notice that he will redeem 6 per cent. bonds in coin at par for the sinking fund.

These Federal election laws, Mr. Chairman, belong to the same anti-republican system of coercive measures as the law authorizing the use of the Army at the polls on the pretense of keeping the peace. It has been said upon the floor of this House by the gentleman from Ohio [Mr. GARFIELD] that no qualified voter had been deprived of the right of suffrage by the use of the Army at the polls. But I can show the gentleman many instances in which citizens of my own State, having all the qualifications required by its constitution and laws, were illegally and forcibly robbed of the elective franchise by the armed soldiers of the United States.

Under this very law of 1865, at an important election for local State officers and members of this House all over the State of Kentucky, many of the very best citizens, who had no connection with the confederate army or confederate cause, were, under the military orders of the general commanding the department, driven from the polls by armed soldiers of the United States and denied the right to vote, for no other reason than the fact that their names were on a "proscribed list," proscribed at the dictation of violent republican partisans by the military authorities in violation of law.

In this connection I desire to say that the gentleman from Ohio asserted in a speech made March 29 that the law authorizing the use of the Army at the polls to keep the peace was introduced in the Senate of the United States and its passage advocated by a distinguished gentleman from my own State, the late Hon. L. W. Powell. Here is the exact language used by the gentleman from Ohio on that occasion.

Who made this law which is denounced as so great an offense as to justify the destruction of the Government rather than let it remain on the statute-book? Its first draught was introduced into the Senate by a prominent democrat from the State of Kentucky, Mr. Powell, who made an able speech in its favor. It was reported against by a republican committee of that body, whose printed report I hold in my hand. It encountered weeks of debate, was amended and passed, and then came into the House. Every democrat present in the Senate voted for it on its final passage. Every Senator who voted against it was a republican. No democrat voted against it. Who were the democrats that voted for it? Let me read some of the names: Hendricks of Indiana, Davis of Kentucky, Johnson of Maryland, McDougall of California, Powell of Kentucky, Richardson of Illinois, Saulsbury of Delaware.

When this statement was made I was startled by it, because I was unable to believe that a man so distinguished for his life-long and consistent devotion to the Constitution of his country, to its free institutions and to the liberty of its people, and one who had signalized his fidelity to principle in times of the severest trial, could ever have introduced and advocated a measure so inconsistent with his well-known convictions as to the powers and limitations of the Federal Constitution. I could not believe that Lazarus W. Powell, the friend of free suffrage and the defender of individual liberty everywhere, could have so far forgotten his own teachings and his own record as to become the advocate of a measure authorizing the Executive and his subordinate officers to overawe by military power the citizen in the exercise of the sacred right of suffrage.

But, Mr. Chairman, when I examined the record I found that Mr. Powell's action upon this subject was consistent with his whole previous public life. I found that he had neither introduced nor advocated, either directly or indirectly, that part of the statute which authorized the use of troops to keep the peace at the polls, which was the only part of the statute we proposed to repeal in the Army bill, and the only part under discussion when the gentleman from Ohio [Mr. GARFIELD] made his speech. On the contrary, the bill as introduced and advocated by Mr. Powell contained no such provision, and the able and elaborate speech made by him on that occasion (one of the greatest ever delivered in the Senate of the United States) was in direct opposition to the use of the Army for any such purpose. I regret that it is impossible for me to read the whole of that great speech, but a single extract will suffice to show its character. Among other things worthy to be remembered by every friend of free government and every advocate of the subordination of the military to the civil authorities at all times and places, he said:

Sir, we have seen the right of suffrage exercised at the point of the sword. There never war a time, it does not exist now, and has not existed since this unfortunate civil war commenced, in which it was necessary for the President to overthrow the Constitution and elevate the military above the civil power. There is power enough in the Constitution to furnish the President every dollar and every man needed for this war. Congress can give him the sword and the purse. What more can you confer? Nothing. Where, then, the necessity and the excuse for these wanton violations of the Constitution, this reckless overthrow of the liberties of the people, this setting at naught the laws and constitutions of the States, this regulating of elections by the sword? None! None! The genius of our Government is founded upon the principle that the military shall be kept in strict subordination to the civil power. But the friends of the President claim it as a matter of necessity to save the life of the nation, when they must see that the President is trampling under his feet the Constitution, and crushing out the liberties of the people, and destroying every vital principle that gives value to free government.

Mr. Chairman, permit me to say in conclusion that we are laboring in this great contest to secure to the citizens of this country non-interference of the military at the polls, fair juries, and a free ballot. We propose to repeal only those parts of what are known as the Federal election laws which authorize the supervisors and deputy marshals to attend the places of registration and voting, to guard, scrutinize, and count the votes, and to arrest the citizen or State officer of election, with or without warrant, and to subject all the State authorities to their control. We do not propose in this bill to repeal any part of the voluminous criminal and penal statutes now in force for the punishment of illegal voting or bribery, intimidation, or fraud of any kind; but it is our fixed and unalterable purpose to remove from the statute-book all that oppressive partisan machinery provided by the republican party for the perpetuation of its own power and party ascendency.

If the republican party really possesses the confidence of a majority of the people it can succeed at all elections without the use of supervisors and deputy marshals; if not, certainly no man will be bold enough to contend that it ought to be authorized by law to employ such partisan machinery for the purpose of overcoming the majority and perpetuating a minority rule by such agencies.

But, Mr. Chairman, bad as these measures relating to supervisors and deputy marshals are, they are not more pronounced in their infamy than the jury law which this bill proposes to repeal. I feel it due to myself and the people I represent here to protest that a provision of law which was repealed by a republican Congress and afterward surreptitiously inserted in the Revised Statutes shall no longer remain a part of the law of this land; a law born of hate, instigated by malice, and which keeps out of the jury-box every man who cannot subscribe to the following oath:

You do solemnly swear (or affirm) that you will support the Constitution of the United States of America; that you have not, without duress and constraint, taken up arms or joined any insurrection or rebellion against the United States; that you have not adhered to any insurrection or rebellion, giving it aid and comfort; that you have not, directly or indirectly, given any assistance in money or any other thing, to any person or persons whom you knew, or had good ground to believe, to have joined, or to be about to join, said insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; and that you have not counseled or advised any person to join any insurrection or rebellion against, or to resist with force of arms, the laws of the United States.

Under this law the great mass of the citizens of intelligence and moral worth in the South are excluded from the jury-box. The Postmaster-General of the United States, and more than fifty members of Congress, together with every man in the Southern States who gave his son a cup of cold water while he was serving in the army of the confederacy, is deprived of the right to sit on a Federal jury, where the life, liberty, or property of any citizen is involved.

Such a law is a disgrace to the civilization of the age, and its repeal is demanded alike by considerations of justice, humanity, and public policy.

If it be true, as some gentlemen on the other side seem to suppose, that the President of the United States attaches so much importance to his power under these laws to interfere with the people's elections that rather than surrender it he will withhold his assent from this bill and thus "starve" the Government to death, upon him rests the responsibility, and not upon us. Whatever may happen, one thing is assured by this debate, these laws are doomed. The attention of the American people once called, as it has been, to these assaults upon their most cherished rights and privileges, they will demand their repeal, and the men who maintain them will be condemned as unworthy of the confidence of the people, who are determined to maintain liberty regulated by law. This great issue is now distinctly made up. There is no escape from it. It may not be settled by this House; if not, there is but one other tribunal before which it can go, the great body of the American people; to its final judgment the majority of this House will confidently submit these great questions and will cheerfully abide its decision.

The Army and the Legislative, Executive, and Judicial Appropriation Bills.

SPEECH OF HON. JEPTHA D. NEW,

OF INDIANA.

IN THE HOUSE OF REPRESENTATIVES,

Monday, April 21, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. NEW said:

Mr. CHAIRMAN: A special session of Congress has been called by the President for reasons and under circumstances unusual in the history of this country. The Constitution provides that all bills for raising revenue shall originate in the House of Representatives. In the last session of the last Congress the House was democratic and the Senate republican. The Army and the legislative, executive, and judicial appropriation bills as they passed the House were not concurred in by the Senate; the conference committees failed to agree, and the disagreement was so near the close of the session that further conference upon, or consideration of, these bills was impracticable. Therefore they are now pending. There has been and is now no substantial difference of opinion as to the sum of the several appropriations. The conflict at the last session and now is with reference to what has been styled the political parts or clauses in these bills.

Points of order, as they are termed, have been made by our republican friends, to the so-called political clauses or riders, upon the ground that they were not germane and did not tend to retrench expenditures. These objections have been overruled by the chairman, and his decision is conclusive. The only issue left is whether the bills in their present form should become law. And inasmuch as there is no contest over the amount of money to be appropriated, the matter in dispute is whether the laws and parts of laws proposed to be amended or repealed ought longer to remain in force. Mr. Chairman, the action had upon these measures in the last Congress is not a matter fairly or properly involved in the present consideration. It is of no consequence whatever to a correct decision at this time, what party is most in fault or most largely responsible for the calling of this session, although this is a question I would not hesitate to discuss if necessary. Nor, sir, is there any question of cowardice, bravery, or back-bone to be passed upon. The President will not, I assume, stop to inquire of the politicians or the press of either political party, which side has or may make out of this struggle the most capital for the next presidential campaign.

And I suppose, sir, that I may assert with emphasis and with absolute confidence that the Chief Magistrate of this united and great Republic will not so far forget that he is the President of the whole people, as to ask or care to know, who first laid down the gage of battle or who was brave enough to first take it up. I assume, also, that the President will not express or feign surprise that these bills contain something more than mere appropriations of money. He is too well informed upon the history of similar legislation in the past to be startled or shocked in this regard. He will only ask, are these bills in their essential features right, and are they within the constitutional power and prerogative of the legislative branch of the Government?

But, sir, it is sought to avoid the effect of the fact that both Houses of Congress continuously since 1861, while largely republican, placed affirmative legislation on appropriation bills, by telling the country that the majority in Congress and the President were then agreed politically, while now it is otherwise. What are we to understand from this? Are we to believe that those Presidents who since 1860 were in accord with the republican majority in both Houses, were expected to be in any degree influenced by that fact when considering whether acts of Congress should be approved or disapproved? If so, is it not a fair inference and conclusion, that the republican majority of the House and Senate, in the past, was less careful and thoughtful as to the necessity, character, and constitutionality of its work than it should and would have been, if the Executive had not been in harmony with that majority politically?

Doubtless this has been the fact in some degree, and it might be true of legislators of any political party so long in power. Mr. Chairman, if there is any force or palliation in the fact that when our republican friends have been in the ascendency in the Senate and House, the Executive was in harmony with them politically, I am not at all certain that this gives them any advantage in the argument. Thus far the conduct of the present Executive has not been unfriendly, apparently, to the ends sought to be attained by the repeal of these statutes and the policy with which their repeal would be in harmony. So conspicuous has this fact become, and so much to his credit has it been, and so earnest and heartfelt have been the expressions of gratitude for his generous Southern policy, that there is to-day great fear and trepidation in certain quarters lest his sympathies should shape to some extent his convictions on these questions. And I cannot at this point forego the opportunity and pleasure of adverting to the fact that the southern policy of the President has received an unselfish and honest support from the democratic party.

For one, sir, I do not hesitate to say, now, here, everywhere, that history will applaud him for having the head, heart, and courage to reach out his hand in an open, manly way to the South and say, Hold up your heads; stand up like men; you are my brothers; we are one people now as before the war; vote for and elect persons of your own choice even if they be not of the republican household. Mr. Chairman, I know that in argument persons and parties often answer that which is said against them by reminding the accuser that he did the same thing. I am not partial to this line or method of disputation; but, sir, when as now our effort to annul certain statutes, for the most part admitted by our opponents to be unnecessary; statutes utterly in conflict, as I think, with the best interests and greatest good of the whole country, and enacted, as now admitted, because of what was supposed by the republican party to be justified by the war; when, I say, in our effort to remove these anti-republican provisions from the laws of the United States, our motives and the method by which we seek to accomplish a result so just are characterized as unpatriotic, and that therefore the democratic party is to be distrusted by the people and driven from the field, it is legitimate, it is pertinent, it is argumentative, to show that the party which has controlled the legislation of the country and all its departments without check or hinderance almost continuously since the close of the war, did the same and much more.

For, sir, when this is made to appear, it is a fair presumption, one which we have a right to insist upon, that the party which now, with such examples fresh and recent before it, seeks good and beneficent ends by similar methods does not do so defiantly, recklessly, or arrogantly, nor in disregard of the rights and prerogatives of any other department of the Government, much less with a disposition to coerce the same. And, sir, inasmuch as a partisan press is seeking to alarm the people with the cry of revolution and parades before the country as evidence of a wicked and revolutionary design on the part of democratic members of Congress the fact that independent legislation is attempted on appropriation bills, I will read briefly from remarks made during this session by two gentlemen of high character, justly distinguished for ability, and who have taken high rank in the republican party. On the 5th instant the gentleman from Ohio [Mr. GARFIELD] said:

> I never claimed that it was either revolutionary or unconstitutional for this House to put a rider on an appropriation bill. No man on this side of the House has claimed that. The most that has been said was that it is a bad practice, and both parties have said that repeatedly.

On the 19th instant the gentleman from Pennsylvania, [Mr. KELLEY,] in an elaborate and able argument upon the pending bill, said:

> On this question of riders on appropriation bills I wish to be explicit. I do not charge that putting extraneous and irrelevant provisions on appropriation bills is revolutionary. It is not; and such an assertion is preposterous. It is not unconstitutional, nor does it contravene any rule of either House of Congress.

The same gentleman, in the same connection, also says that it has been the practice of all parties to so legislate from soon after the formation of the Government, although he thinks the precedent a bad one.

Mr. Chairman, an examination of the sections of the Revised Statutes relating to the Army discloses the fact that over one-half of them have been enacted on appropriation bills, and some of the laws we now propose to repeal were passed in the same way.

Seventeen States are represented upon this floor by virtue of an election held under a provision enacted upon the sundry civil bill at the second session of the Forty-third Congress. The provision to which I refer is as follows:

> SEC. 6. That section 25 of the Revised Statutes, prescribing the time for holding elections for Representatives to Congress, is hereby modified so as not to apply to any State that has not yet changed its day of election of State officers in said State.

Our republican friends here and throughout the country will not soon forget that at one time Andrew Johnson was the President of the United States. Let us go back for a moment to the time when the impeachment of this sturdy and fearless patriot was impending, a patriot President so pure, so steadfast and devoted, under the most trying circumstances, to the Constitution and flag of his country, that men of all parties, leaders as well as laymen, bowed their heads in sorrow when he passed from earth. All America to-day admits that his cause was just, and that the effort to depose him as President was a cruel partisan wrong, a foul stain and blot that will not out upon the annals of the country.

On the 7th of March, 1866, in the House, a resolution was introduced and referred to the Judiciary Committee directing an inquiry into the official conduct of Mr. Johnson as President of the United States, and requiring the committee to report whether in their opinion he had "been guilty of acts which were designed or calculated to overthrow or corrupt the Government of the United States, or any department or officer thereof; and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes and misdemeanors, requiring the interposition of the constitutional powers of this House."

Pending this inquiry by the Judiciary Committee, the whole country

was at a white heat upon the subject of the then threatened impeachment of the President of the United States. The leaders and a large majority of the rank and file of the republican party were clamorous for his impeachment. The republican press, with hardly an exception, joined in the demand for his arraignment, and the republican party had a large majority in the House and the two-thirds in the Senate requisite for conviction. The war was over and the public welfare would have been best promoted by "peace and rest," but on the 19th of February, 1867, at the second session of the Thirty-ninth Congress, before the report of the Judiciary Committee was made, the Army appropriation bill was taken up, the following section as independent and affirmative legislation having been attached thereto:

SEC. 2. *And be it further enacted*, That the headquarters of the General of the Army of the United States shall be in the city of Washington, and all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and in case of his inability by the next in rank. The General of the Army shall not be removed, suspended, or relieved from command or assigned to duty elsewhere than at said headquarters without previous approval of the Senate; and any orders of instruction relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the Army who shall transmit, convey, or obey any orders or instructions so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

We all know why this was done. Nothing of the kind had ever been heard of in the history of this Government. No distrust of the patriotism of the President as the Commander-in-Chief of the Army and Navy had ever before been expressed by Congress. No insulting, flagrant, and coercive assault was ever before in this country made by one branch of the Federal Government upon another.

On the 20th of February Mr. Le Blond, of Ohio, moved to strike out this section, and his motion was voted down by a solid republican vote. The present Executive was a member of the House at that time. The bill went to the Senate, and there a motion to strike out the same section was voted down. All of the negative votes were by republicans, and I find among them ANTHONY, CHANDLER, EDMUNDS, KIRKWOOD, Sherman, Sumner, and Wade.

Mr. Chairman, what did President Johnson do? Did he veto that appropriation bill? Did he determine to "starve the Government to death" rather than submit to this "revolutionary" attack upon the Executive? No, sir; notwithstanding his known independence of character and high courage he signed the bill. Here are his manly words:

To the House of Representatives:

The act entitled "AN act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," contains provisions to which I must call attention. Those provisions are contained in the second section, which in certain cases virtually deprives the President of his constitutional functions as Commander-in-Chief of the Army, and in the sixth section, which denies to ten States of this Union their constitutional right to protect themselves in any emergency by means of their own militia. Those provisions are out of place in an appropriation act. I am compelled to defeat these necessary appropriations if I withhold my signature to the act. Pressed by these considerations I feel constrained to return the bill with my signature, but to accompany it with my protest against the sections which I have indicated.

ANDREW JOHNSON.

MARCH 2, 1867.

What legislation could be more distasteful or coercive than this? Mr. Johnson says, "*pressed* by these considerations I feel *constrained* to return the bill with my signature." It was well known by Congress when the section I have read was made part of an appropriation bill, that nothing could be more offensive in every sense to the Executive than such a measure. Will gentlemen on the other side tell us, or say to each other, or to the country, that he was afraid to withhold his signature because his impeachment was then impending? Did republican Senators and Representatives take advantage of such a fear or apprehension, if it existed, to compel him to sign the bill? It could not become law at that session without his signature, and they were determined that he should give it his approval. It passed the Senate February 26, and inasmuch as ten days would not intervene after the bill was presented to the President before the allotted term of that Congress would expire, the bill could not become operative without the President's signature.

At the second session of the last Congress, when the Senate was republican, a provision relating to the use of the Army as a *posse comitatus* was added as a rider to the Army appropriation bill. This was a democratic measure, championed by Mr. Hewitt, of New York. It passed both Houses, was approved by the President, and is in line and harmony with the legislation which we now favor. It is in the following words:

From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States as a *posse comitatus* or otherwise for the purpose of executing the laws, except in such cases and under such circumstances as such employment of such force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section; and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding $10,000 or imprisonment not exceeding two years, or by both such fine and imprisonment.

The section as adopted was agreed upon in a conference committee of the two Houses, the Senate and House having failed to agree up to that time. I deem it important to produce at this point the remarks made by Mr. Hewitt when he reported the action of the conference committee. He said:

The Senate had already conceded what they called and what we might accept as the principle; but they had stricken out the penalty and had stricken out the word "expressly," so that the Army might be used in all cases where implied authority might be inferred. The House committee planted themselves firmly upon the doctrine that, rather than yield this fundamental principle, for which for three years this House had struggled, they would allow the bill to fail, notwithstanding the reforms we had secured, regarding these reforms as of little consequence alongside the great principle that the Army of the United States, in time of peace, should be under the control of Congress and obedient to its laws. After a long and protracted negotiation, the Senate committee have conceded that principle in all its length and breadth, including the penalty which the Senate had stricken out.

Mr. Chairman, how strange that there should have been any objection, or hesitation, upon a question so vital to the liberties of the citizen! How startling the fact that the representatives of any political party in this country, fourteen years after the war was over, with all the States fully represented in Congress, should object to the reassertion and enforcement of one of the dearest and most sacred doctrines of the fathers—a principle sacred, canonized, and crystallized in England's unwritten constitution, and so well understood and universally conceded by our ancestors in the beginning of our national life under the Constitution, that its formal announcement in terms in that instrument was deemed unnecessary.

Sir, the hesitation of which I have just spoken was begotten of familiarity with war precedents, ideas, and measures. It was the insidious, stealthy growth of eighteen years. Those who were possessed of it, and were influenced by it, had forgotten or failed to recall the fact, that before the war there was no difference of opinion among people or parties in this country, as to the absolute and unchallenged supremacy and superiority of the civil over the military power.

During the war of the rebellion, amid pressing dangers, civil jurisdiction and constitutional forms and rights were at times suspended and abandoned. Civil and military ideas became so mixed and merged, that the appropriate offices and boundaries of both were lost sight of in some degree, if not obscured. This was probably, in some measure, unavoidable in a civil war of such magnitude. Hallam, the great English historian says:

We find in the history of all usurping governments time changes anomaly into system and injury into right. Examples beget custom and custom ripens into law, and the doubtful precedents of one generation become the fundamental maxims of another.

He also tells us in his Constitutional History, that it is of the supremest importance that a free people should watch with extreme jealousy the disposition toward which most governments are prone to introduce too soon, extend too far, and retain too long, remedies, methods, and maxims adopted under the exigencies of war, but hurtful and destructive of civil liberty in time of peace.

SOLDIERS AT THE POLLS.

In the Army bill it is proposed to amend sections 2002 and 5528 of the Revised Statutes by striking out the words *or to keep the peace at the polls*.

The sections, without the amendment, read as follows:

SEC. 2002. No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, *or to keep the peace at the polls*.

SEC. 5528. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control, any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, *or to keep the peace at the polls*, shall be fined not more than $5,000, and suffer imprisonment at hard labor not less than three months nor more than five years.

Section 2002 with the words "or to keep the peace at the polls" stricken out, and with a further amendment by way of a proviso, which I had the honor to offer and which has been adopted by this House, will, if it should pass the Senate in that form and be approved by the President, read as follows:

No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States: *Provided*, That nothing contained in this section, as now amended, shall be held or deemed to abridge or affect the duty or power of the President of the United States, under section 5297 of the Revised Statutes, enacted under and to enable the United States to comply with section 4 of article 4 of the Constitution of the United States, on application of the Legislature or executive, as provided for in said section.

We say that troops or armed men should not be placed at election polls to keep the peace. Mr. Chairman, this subject asserts its own importance.

The distinguished gentleman from Ohio [Mr. GARFIELD] in his first remarks on the Army bill used the following language, speaking of these sections:

Do gentlemen know its history? Do they know whereof they affirm? Who made this law which is denounced as so great an offense as to justify the destruction of the Government rather than let it remain on the statute-book? Its first draught was introduced into the Senate by a prominent democrat from the State of Kentucky, Mr. Powell, who made an able speech in its favor. It was reported against by a republican committee of that body, whose printed report I hold in my hand. It encountered weeks of debate, was amended and passed, and then came into the House. Every democrat present in the Senate voted for it on its final passage. Every Senator who voted against it was a republican. No democrat voted against

it. Who were the democrats that voted for it? Let me read some of the names: Hendricks of Indiana, Davis of Kentucky, Johnson of Maryland, McDougall of California, Powell of Kentucky, Richardson of Illinois, and Saulsbury of Delaware.

Of republican Senators thirteen voted against it; only ten voted for it.

The bill then came to the House of Representatives and was put upon its passage here. How did the vote stand in this body? Every democrat present at the time in the House of Representatives of the Thirty-eighth Congress voted for it. The total vote in its favor in the House was 113; and of these 58 were democrats. And who were they? The magnates of the party. The distinguished Speaker of this House, Mr. SAMUEL J. RANDALL, voted for it. The distinguished chairman of the Committee of Ways and Means of the last House, Mr. FERNANDO WOOD, voted for it. The distinguished member from my own State, who now holds a seat in the other end of the Capitol, Mr. GEORGE H. PENDLETON, voted for it. Messrs. COX and COFFROTH, KERNAN and MORRISON, who are still in Congress, voted for it. Every democrat of conspicuous name and fame in that House voted for the bill, and not one against it.

Inasmuch as these remarks of the gentleman from Ohio have gone to the country, and are widely circulated and read, as all his utterances on this floor are—for he always speaks well—I deem it proper to state what I understand the facts to be as to the support received by this law from democratic Senators and Representatives at the time of its passage in February, 1865.

Senator Powell, of Kentucky, early in 1864, introduced a bill in the Senate containing substantially the provisions found in the two sections which we are trying to amend, except the words "or to keep the peace at the polls." Over his vigorous protest and against the votes of every democratic Senator the bill was referred to the Committee on Military Affairs, and by it an adverse report was made. Senator Powell, however, pressed the measure, and on the 22d of June, 1864, Mr. Pomeroy moved to amend by adding the words "or to keep the peace at the polls."

I now read from the Congressional Globe, volume 53, pages 3159 and 3160:

Mr. POMEROY. I wish to amend that amendment by adding to it "or to keep the peace at the polls."

Mr. POWELL. I object to that. It would destroy the effect of the bill. The State authorities can keep the peace at the polls.

Mr. SAULSBURY. That is the very pretext on which the outrages were committed in my State, and it is the very pretext that will be put forward again.

The submission and vote on the amendment is as follows:

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Kansas [Mr. Pomeroy] to the amendment made as in Committee of the Whole.

Mr. Lane, of Kansas, called for the yeas and nays, which were ordered; and being taken, resulted—yeas 16, nays 15; as follows:

YEAS—Messrs. Anthony, Chandler, Clark, Collamer, Foot, Grimes, Harlan, Harris, Howard, Lane of Kansas, Morgan, Morrill, Pomeroy, Ten Eyck, Trumbull, and Wade—16.

NAYS—Messrs. Buckalew, Carlile, Davis, Foster, Hale, Hendricks, Hicks, Johnson, McDougall, Powell, Richardson, Riddle, Saulsbury, Willey, and Wilson—15.

The bill then, as amended, passed the Senate, the democratic Senators voting for it as the only and best thing they could do. For the same reason it was voted for by the democrats in the House.

It will be observed that Foster, Hale, and Willey, republicans, voted with the democrats against inserting the words which we now say should be stricken out.

The gentleman from Ohio [Mr. GARFIELD] in the same speech said:

The question, Mr. Chairman, may be asked why make any special resistance to the clauses of legislation in this bill, which a good many gentlemen on this side declared at the last session they cared but little about, and regarded as of very little practical importance, because for years there had been no actual use for any part of these laws, and they had no expectation there would be any? It may be asked, why make any controversy on either side? So far as we are concerned, Mr. Chairman, I desire to say this: We recognize the other side as accomplished parliamentarians and strategists, who have adopted with skill and adroitness their plan of assault. You have placed in the front one of the least objectionable of your measures; but your whole programme has been announced, and we reply to your whole order of battle. The logic of your position compels us to meet you as promptly on the skirmish line as afterward, when our intrenchments are assailed, and therefore, at the outset, we plant our case upon the general ground upon which we have chosen to defend it.

It will be seen, therefore, that the gentleman has little to say and cares little about the changes we propose so far as the merits are concerned. But he does not like our programme and "order of battle." Of all this I have already spoken, and have shown that our method is not unusual or revolutionary, but is in accord with the practice of this House almost from the foundation of the Government.

Mr. Chairman, two questions arise in the consideration of the issue here presented:

First. Is that part of section 2002 which permits soldiers and armed men to be placed by military, naval, or civil officers of the Federal Government at election polls in the States, to keep the peace of the States, constitutional?

Second. If constitutional, is it wise and for the best interest of the country that a law giving such unusual authority, and so liable to abuse, should be continued in force?

If either one of these questions ought to be answered in the negative there should be no further controversy. Or if such a provision of law is of doubtful constitutionality it should be repealed. I do not believe it to be constitutional. I know of no express or implied warrant in the Constitution for such power. The amendment which we propose has been talked of here, and commented upon by the republican press, as though the words to be stricken out were inserted with a view to the especial protection of the colored voters of the South, under section 2 of article 15 of the Constitution. I do not say that this has been said in so many words, but the subject has been so discussed by some of our republican friends, and so commented upon by the republican press, as to make that impression on the minds of many persons. That this cannot be true, is of course obvious, when it is remembered that section 2002 was approved in 1865, while article 15 of the Constitution did not become a part of the Constitution until 1870.

It cannot be defended as a constitutional measure under the first clause of section 4 of article 1 of the Constitution, for it is not addressed to nor does it purport to affect the subject of the "*manner* of *holding* elections" in the States for Representatives to Congress. It is clear that if it had been intended to make section 2002 or any part of it operative under or by virtue of any power conferred upon Congress by section 4 of article 1, the section would have contained words indicating that intention, for it would have been the first act of Congress of the kind.

Mr. Chairman, there are many persons who labor under the delusion that the right of suffrage is conferred by section 1 of the fifteenth amendment, which declares that the right of the citizen of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude; and they try to vindicate the presence of troops at the polls to the end that this right may be enforced or protected.

Article 15 of the Constitution does not confer the right of suffrage upon any one. Section 2 of article 1 says:

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

It will be seen, therefore, that the qualifications of the voter are fixed by the State and not by the United States. And it matters not what qualifications the State may impose provided the right to vote is not denied or abridged on account of race, color, or previous condition of servitude. The right with which the colored citizen is invested by the fifteenth amendment is not the right to vote, but the right of exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.

In the case of the United States *vs.* Reese *et al.*, recently decided in the Supreme Court of the United States, the court says:

The fifteenth amendment does not confer the right of suffrage on any one. It prevents the States or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, &c., as it was on account of age, property, or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of any other having the same qualifications must be. Previous to this amendment there was no constitutional guarantee against the discrimination; now there is.

It is here held that the Constitution has not conferred the right of suffrage upon any person, white or black. In other words it is decided that the United States has no voters of its own creation in the States. In another case, in same volume, page 555, the Supreme Court says:

The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.

Congress may, under the second section of the fifteenth amendment, enforce the first by appropriate legislation. But what kind of law would be appropriate, the object being to prevent a "State" from discriminating against a citizen thereof in the matter of the elective franchise on account of race, color, or previous condition of servitude? Could a "State" within the meaning of the fifteenth amendment deny or abridge the right to vote on account of race, &c., otherwise than by law? Certainly not. Does it not follow, then, that Congress could not *appropriately* legislate at all by way of enforcement of the first section, unless the State had by law, first made the discrimination on account of race, color, &c.?

To my mind this view seems very clear. Legislation upon the subject of keeping the peace at the polls is not legislation upon the subject embraced in the fifteenth amendment. If the State does not make the discrimination, against which and to prevent which, Congress is empowered by the Constitution to legislate, what has Congress to stand upon, what foothold can Congress have within constitutional limits to take any steps in that direction? This view would admit of much further elaboration and illustration, but I cannot devote more time to it now.

Mr. Chairman, during the debate on the military bill it has been claimed that in some way or somehow the President, or somebody subject to his orders, would be prevented or interfered with, in the discharge of some duty devolved on the President by the Constitution if section 2002 should be amended as proposed.

As President, or as Commander-in-Chief of the Army and Navy, everybody knows that he has no power except as conferred by the Constitution, and that those powers are to be exercised or applied as directed by law. The Constitution is not self-executing. It was not the design of the convention that it should be. This is very plain, for the last clause of section 8 of article 1, which concludes the enumeration of the grants of power to Congress, says:

To make all laws which shall be necessary and proper for *carrying into execution* the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

But it is said that the amendment we suggest would interfere with authority which might be lawfully exercised by United States mar-

shals as civil officers in the service of the United States. Marshals are not peace officers at common law, and no statute can be found which declares them to be peace officers.

By the *posse comitatus* act already quoted no part of the Army can be "employed," no matter by whom, as a *posse comitatus* unless the "employment of such force may be *expressly* authorized by the Constitution or by act of Congress." Will it be said that section 2002, or any other statute or law, *expressly* confers authority on the marshal or any one else to employ soldiers or armed men to keep the peace at the polls? If not, what right or authority are we taking away from them by the amendment? Does not the striking out of the words "or to keep the peace at the polls" simply leave these sections consistent with the *posse comitatus* act which I have heretofore read?

Mr. Chairman, I again call attention to the fact that the *posse comitatus* act prohibits any and all persons from using troops for the purpose of executing the laws, except when expressly authorized by the Constitution, or by act of Congress. The right to so use the Army is thereby denied to all officers and persons, whether military, naval, or civil.

Sir, it is very questionable in my mind whether the words we seek to strike out are now in force at all, the *posse comitatus* act being last enacted, for those words do not relate back to any power in the Constitution or act of Congress expressly authorizing the use of troops or armed men to keep the peace at the polls. But to save all question or controversy on this point those words ought to be expunged. So much of the section as will remain will be in harmony with the *posse comitatus* act.

It has been asked with great flourish why we would deny this power to a civil officer even if we are not willing to trust an Army or Navy officer with its exercise. For one, sir, I answer this question squarely and without evasion. I would rather trust an officer of the regular Army to keep the peace at the polls than any Federal civil officer. Officers of the Army would be less inclined to partisan bias and unfairness than United States marshals, who are always active and often unscrupulous politicians. I would rather trust soldiers of the regular Army at the polls to keep the peace than "armed men" taken out of the civil walks of life, for the latter would, like deputy marshals under the supervisors law, be selected from but one political party, and therefore would be partial to the party from which they were taken.

The following section in the Revised Statutes has been quoted with great emphasis for the purpose of showing that United States marshals may act as peace officers in the States:

SEC. 788. The marshals and their deputies shall have in each State the same powers in executing the laws of the United States as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof.

That is to say, a United States marshal in executing the process or precepts of the Federal courts directed to him shall, like a sheriff, have the right, in the exercise of sound discretion, to command all necessary assistance in the execution of his duty.

The following opinion and statement of the powers of United States marshals will be good authority, I doubt not, with our friends on the other side of this Chamber, as also with the Executive in whose Cabinet Mr. Evarts is a distinguished member:

ATTORNEY-GENERAL'S OFFICE,
August 20, 1868.

SIR: Your letter of the 12th instant reached me yesterday, and has received an attentive consideration. Colonel Sprague's information to you must have been based upon his own construction of General Meade's order lately issued, and not upon any special instructions from the President to Colonel Sprague through General Meade or otherwise, as no such special instructions have been issued by the President. You add: "Under some circumstances I should be glad to have the aid of the military, and, if practicable, would be pleased to have instructions given to the military to aid me when necessary. I ask this as Colonel Sprague informs me under his instructions he cannot do so."

This desire and request for the aid of the military under certain circumstances I understand to refer to the occasional necessity which may arise that the marshal should have the means of obtaining the aid and assistance of a more considerable force than his regular deputies supply for execution of legal process in his district.

The twenty-seventh section of the judiciary act of 1789 establishes the office of marshal, and names among his duties and powers the following: "And to execute throughout the district all lawful precepts directed to him and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint, as there may be occasion, one or more deputies." (1, par. 87.)

You will observe from this that the only measure of the assistance which you have power to command is its necessity for the execution of your duty, and upon your discreet judgment, under your official responsibility, the law reposes the determination of what force each particular necessity requires. This power of the marshal is equivalent to that of a sheriff, and with either embraces, as a resort in necessity, the whole power of the precinct (county or district) over which the officer's authority extends. In defining this power Attorney-General Cushing—and, as I understand the subject, correctly—says it "comprises every person in the district or country above the age of fifteen years, whether civilians or not, and including the military of all denominations—militia, soldiers, marines—all of whom are alike bound to obey the commands of a sheriff or marshal."

While, however, the law gives you this "power to command all necessary assistance," and the military within your district are not exempt from obligation to obey, in common with all the citizens, your summons, in case of necessity, you will be particular to observe that this high and responsible authority is given to the marshal only in aid of his duty "to execute throughout the district all lawful precepts directed to him and issued under the authority of the United States," and only in case of necessity for this extraordinary aid. The military persons obeying this summons of the marshal will act in subordination and obedience to the civil officer, the marshal, in whose aid in the execution of process they are called, and only to the effect of securing its execution.

The special duty and authority in the execution of process issued to you must not be confounded with the duty and authority of suppressing disorder and preserving the peace, which under our Government belongs to the civil authorities of the States, and not to the civil authorities of the United States. Nor are this special duty and authority of the marshal in executing process issued to him to be confounded with the authority and duty of the President of the United States in the specific cases of the Constitution and under the statutes to protect the States against domestic violence, or with his authority and duty under special statutes to employ military force in subduing combinations in resistance to the laws of the United States; for neither of these duties or authorities is shared by the subordinate officers of the Government, except when and as the same may be specifically communicated to them by the President.

I have thus called your attention to the general considerations bearing upon the subject to which your letter refers for the purpose of securing a due observance of the limits of your duty and authority in connection therewith. Nothing can be less in accordance with the nature of our Government or the disposition of our people than a frequent or ready resort to military aid in the execution of the duties confided to civil officers. Courage, vigor, and intrepidity are appropriate qualities for the civil service which the marshals of the United States are expected to perform, and a re-enforcement of their power by extraordinary means is permitted by the law only in extraordinary emergencies.

If it shall be thought that any occasion at any time exists for instructions to the military authorities of the United States within any of the States in connection with the execution of process of the courts of the United States, these instructions will be in accordance with the exigency then appearing.

I am, sir, very respectfully, your obedient servant,

WM. M. EVARTS,
Attorney-General.

ALEXANDER MAGRUDER, Esq.,
United States Marshal Northern District of Florida, Saint Augustine, Florida.

Judge Story, while upon the supreme bench, said:

To guard, however, against any possible misconstruction of our views, it is proper to state that we are by no means to be understood in any manner whatever to doubt or to interfere with the police power belonging to the States in virtue of their general sovereignty. That police power extends over all subjects within the territorial limits of the States, and has never been conceded to the United States.

Mr. Chairman, it is folly to suppose that it was intended by section 788 to clothe United States marshals with police powers within the territorial limits of the States. That statute was enacted in 1795. With the indifferent facilities for travel at that time, and the large territories constituting the several bailiwicks of the marshals, for a period long after the passage of that section, it would have been impossible for them to be at all efficient as peace officers. But we are asked, what if it should become necessary to command the peace when the marshal is executing process placed in his hands? This is easily answered. Another section of the Revised Statutes gives him "power to command all necessary assistance in the execution of his duty." What matters it to him or the General Government if others disturb the peace of the State in opposing the execution of Federal process placed in his hands? If the peace of the State is disturbed, it is a violation of the law of the State, and the proper peace officer of the county will command and enforce the peace.

The marshal is in the State to execute the process of the United States, not to prevent or look after the violation of some law of the State, that may result from wrongful and unlawful resistance of the execution by him of the duty with which he is charged.

Of course the disturber of the peace might by the very act which would break the peace of the State, also violate a criminal statute of the United States, and thus be liable to punishment twice for the same act, but not for the same offense.

Rights and immunities created by or dependent upon the Constitution can be protected and enforced; but they must be enforced by law. The form or manner of protection or enforcement must be such as Congress shall by law provide. That the Constitution does not invest the President with the extraordinary power claimed for him, and that it was not intended that any such power should be implied or inferred, is illustrated all through the Constitution. As a fair and conclusive illustration, Mr. Chairman, I will read section 4 of article 4 of that instrument:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

It will be observed that the President is not named. How, that is, through what department of the Government as an instrumentality, this guarantee is to be made effective, has been fixed by Congress by laws enacted under the last clause of section 8 of article 1 of the Constitution. Let me read a statute enacted as "necessary and proper" under this article. I read section 5297 of the Revised Statutes, under the title "Insurrection:"

In case of an insurrection in any State, against the government thereof, it shall be lawful for the President, on application of the Legislature of such State, or of the executive, when the Legislature cannot be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ, for the same purposes, such part of the land or naval forces of the United States as he deems necessary.

This section was enacted in 1795 and 1807. All above that portion providing for the use of the land and naval forces of the United States was passed in 1795. Langdon, Gilman, Morris, Martin, and other members of the convention which framed the Constitution were members of the Congress which passed that part of section 5297. Madison and Monroe were in the same Congress. It will be admitted, I presume, if anything will be admitted by the other side in this debate, that these gentlemen were well informed as to the powers intended to be vested in the Executive by those who framed the Constitution.

It would seem that if there could be any case where it might be important to leave out the restraints or delays of statutory enactments so that the Executive could act at once, it would be in the event of

the invasion of a State, or domestic violence so formidable as to defy the power of the State. And yet we see that the framers of the Constitution did not take this view. They acted wisely. They wanted to hold in check and control what might be the usurping nature or purpose of an ambitious Executive, who by the same Constitution was also made Commander-in-Chief of the Army and Navy, and militia of the States when called into the actual service of the United States; and who might, therefore, if his duties and powers were not well defined, claim a plausible construction of the Constitution in his own favor and thus become a law unto himself and his political supporters, and a tyrant to all who did not willingly yield to his arrogated authority.

Mr. Chairman, while it is true that the Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land, it is just as true that articles 9 and 10 of the Constitution are not empty and idle declarations. There are rights and powers which have been retained and reserved by the people and the States. This as a distinct subject I shall not go into. But we should never lose sight of the fact that in constitutional construction, the extent of a grant of power or powers to either of the co-ordinate branches of the Government, can be safely measured, only by the words used and the purpose to be subserved by the grant.

We hear it said, will you allow all the other departments of the Government to exercise a discretion and not the President? Mr. Chairman, this kind of talk, be it ever so loud and dramatic in its utterance, will not so confuse or deceive anybody as to prevent a ready answer. It is so absurd as to scarcely merit notice. We all know that the President must at times exercise his own judgment, or discretion, if that is a better word, independent of any other branch of the Government. Under section 4 of article 4 of the Constitution, already quoted, and under section 5297 of the Revised Statutes, the President must judge for himself whether the "application" is from the true executive of the State; or, if from the Legislature, whether it be the true Legislature. He must also determine for himself whether the facts thus communicated to him bring the case within the Constitution and the law. The President is the exclusive and final judge under section 5297, whether the exigency has arisen. But, sir, having made up his mind on these points, the power with which he is invested must be applied in the manner provided by law. He cannot be impeached and deposed for error of judgment, and it follows, therefore, that if Congress cannot control the manner of the exercise of his constitutional powers, he can at will become a despot, and there would be no remedy save revolution.

Mr. Chairman, the debates in the constitutional convention show plainly that the purpose to define the powers of the Executive was strong and resolutely maintained throughout. The debates also show that it was the design to place no more power in his hands than was believed to be strictly necessary. The evidence of this is overwhelming. The British King had the power to declare war, raise, and regulate armies and navies. Under our Constitution these powers are given to Congress alone. The King also had, and has ever had, the sole and supreme command of the militia throughout the realm and dominions. With us the President is the Commander-in-Chief of the militia only when they are "called into the actual service of the United States." It was proposed by some of the delegates that he be given the absolute command of the State militia, but it was refused. There was marked opposition even to his having the command in person of the Army in the field, in time of actual war, unless Congress should desire it. The State of New York proposed an amendment to the Constitution to that effect.

Mr. Chairman, the fear of the people at the time of the ratification by them of the Constitution, that the Army might be used for purposes and in ways subversive of civil liberty, is shown, by the fact that one of the strongest objections urged against the Constitution in the State conventions called to ratify it, was, that it did not contain a provision against the existence of a standing Army in time of peace. When the State of New York ratified the Constitution the following declaration was made:

> Standing armies in time of peace are dangerous to liberty and ought not to be kept up except in cases of necessity; and that at all times the military should be under strict subordination to the civil power.

When New Hampshire ratified the Constitution the convention recommended an amendment as follows:

> That no standing army shall be kept in time of peace, unless with the consent of three-fourths of the members of each branch of Congress.

Rhode Island and other States proposed like amendments.

Our friends on the other side of the Chamber will doubtless think it strange that there should have been such jealousy and fear of military power in that early day, the people having just emerged from the war of the Revolution, and the Army having been their salvation. Sir, the people at that time well understood that with nations constitutions and laws should be made with reference to their average results. They well understood that in time of peace plausible pretexts might be found to use the military as a professed maintenance of the civil power, and that in the end the former would become superior to the latter. They knew the fondness of mankind for military display, and the danger to free institutions whenever the people should be brought to believe that the Army was the chief stay and support of their liberties.

Mr. Seward in 1856 said in the Senate of the United States:

> Civil liberty and a standing army for the purposes of a civil police have never yet stood together, and never can stand together. If I am to choose, sir, between upholding laws in any part of this Republic which cannot be maintained without a standing army or relinquishing the laws themselves, I give up the laws at once, by whomsoever they are made and by whatever authority; for either our system of government is radically wrong, or such laws are unjust, unequal, and pernicious.

And in this same speech he said:

> The time was, and that not long ago, when a proposition to employ the standing Army of the United States as a domestic police would have been universally denounced as a premature revelation of a plot, darkly contrived in the chambers of conspiracy, to subvert the liberties of the people and to overthrow the Republic itself.

Mr. Chairman, is there a man of intelligence and ordinary fairness of decision in all this broad, free land, of any political party, who believes that the convention which framed the Constitution could have been induced to insert a clause in that instrument allowing troops or armed men to be stationed at the polls to keep the peace, at elections in the States where Representatives to Congress were to be chosen? Would it not have been at once denounced as a monstrous proposition? Would it not have been branded as a device by which the party in power could continue itself in power? If the ocean cable should to-morrow bring to us intelligence that the French Chamber of Deputies had by law empowered the President of the French Republic, in his discretion, to station soldiers and armed men at the election polls to keep the peace when members of that body were to be voted for, there would be but one voice in this House and throughout the country as to the design in granting such authority.

But sir, let us come nearer home. What would be thought of a State Legislature, both branches and the governor being agreed politically, that would empower the governor at his discretion to place armed men at the polls to keep the peace? What act by the General Assembly of a State would meet with more indignant and violent opposition? Would not the party in the minority in such State justly denounce it as an outrage upon the elective franchise? Would not such a statute, even if not enforced, be a constant menace to free elections? If the executive of one of the States shall not have this despotic power, shall the Executive of all the States be invested with it? Mr. Chairman, I cannot understand how there can be more than one opinion and one voice upon this subject.

The Constitution, in article 4, section 4, provides:

> The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

Mr. Chairman, it is so manifest that this provision does not give to the President or Congress the power to place soldiers or armed men at election polls to keep the peace, and cannot be so construed, that I will not enter upon an argument to demonstrate that it does not. Its terms are explicit, and as I have already shown, Congress at a very early day passed an act empowering the Executive to make effective this guarantee. In that act Congress was very careful to use language which pointed to the exact subject, and none other, referred to in this section of the Constitution. In this connection I wish to read from Story on the Constitution, volume 2, section 1825:

> It may not be amiss further to observe that every pretext for intermeddling with the domestic concerns of any State, under color of protecting it against domestic violence, is taken away by that part of the provision which renders an application from the legislative or executive authority of the State endangered necessary to be made to the General Government before its interference can be at all proper.

Judge Cooley, a distinguished jurist of our own country, and a member of the republican party, in his great work on Constitutional Limitations, under the title of "Freedom of Elections," says:

> The ordinary police is the peace force of the State, and its presence suggests order, individual safety, and public security; but when the militia appear upon the stage, even though composed of citizen militia, the circumstances must be assumed to be extraordinary, and there is always an appearance of threatening and dangerous compulsion which might easily interfere seriously with that calm and unimpassioned discharge of the elector's duty which the law so justly favors. The soldier in organized ranks can know no law but such as is given him by his commanding officer, and when he appears at the polls there is necessarily a suggestion of the presence of an enemy, against whom he may be compelled to exercise the most extreme and destructive force, and that enemy must generally be the party out of power, while the authority that commands the force directed against them will be the executive authority of the State, for the time being wielded by their opponents.

The Hon. George W. McCrary, now Secretary of War, in his valuable and standard work on elections, written since the close of the war, and which is the leading authority in all contested-election cases which come before this House, says:

> There can, however, be no doubt but that the law looks with great disfavor upon anything like an interference by the military with the freedom of an election. An armed force in the neighborhood of the polls is almost of necessity a menace to the voters, and an interference with their freedom and independence, and if such armed force be in the hands of or under the control of the partisan friends of any particular candidate or set of candidates, the probability of improper influence becomes still stronger.

Mr. Chairman, the English Parliament has set the American Congress some ancient and memorable examples of legislation upon the subject of the presence of soldiers at elections. Early in the reign of George the Second a statute was enacted from which I read as follows:

> SEC. 2. *And be it enacted*, That on every day appointed for the nomination or for

the election or for taking the poll for the election of a member or members to serve in the Commons House of Parliament no soldier within two miles of any city, borough, town, or place where such nomination or election shall be declared or poll taken shall be allowed to go out of the barrack or quarters in which he is stationed, unless for the purpose of mounting or relieving guard, or for giving his vote at such election; and that every soldier allowed to go out for any such purpose within the limits aforesaid shall return to his barrack or quarters with all convenient speed as soon as his guard shall have been relieved or vote tendered.

SEC. 3. *And be it enacted*, That when and so often as any election of any member or members to serve in the Commons House of Parliament shall be appointed to be made, the clerk of the Crown in chancery or other officer making out any new writ for such elections shall, with all convenient speed, after making out the same writ, give notice thereof to the secretary at war, or, in case there shall be no secretary at war, to the person officiating in his stead, who shall, at some convenient time before the day appointed for such election, give notice thereof in writing to the general officer commanding in each district of Great Britain, who shall thereupon give the necessary orders for enforcing the execution of this act in all places under his command.

Blackstone in his Commentaries, in speaking of the election of members of Parliament, page 170, Tucker's edition, says:

As soon, therefore, as the time and place of election, either in counties or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the poll is ended. Riots, likewise, have been frequently determined to make an election void.

In the History of Parliament the following interesting passage is found:

The military having been called in to quell an alleged riot at Westminster election in 1741, it was resolved, December 22d, "that the presence of a regular body of armed soldiers at an election of members to serve in Parliament is a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom." The persons concerned in this having been ordered to attend the house, received on their knees a very severe reprimand from the speaker.—*Parliament History*, IX, 326.

Some of the States of this Union have statutes upon this subject. Here are a few of them which I will read:

110. No body of troops in the Army of the United States or of this Commonwealth shall be present, either armed or unarmed, at any place of election within this Commonwealth, during the time of such election: *Provided*, That nothing herein contained shall be so construed as to prevent any officer or soldier from exercising the right of suffrage in the election district to which he may belong if otherwise qualified according to law.—*Purdon's Digest; Brightly*, 1700-1861, *Laws of Pennsylvania*, page 383.

SEC. 5. If any officer or other person shall call out or order any of the militia of this State to appear and exercise on any day during any election to be held by virtue of this chapter, or within five days previous thereto, except in cases of invasion or insurrection, he shall forfeit the sum of $500 for every such offense.—*Revised Statutes of New York, Banks & Brothers*, fifth edition, volume 1, title 7, chapter 6, page 448.

SEC. 33. No such election shall be appointed to be held on any day on which the militia of this State shall be required to do military duty, nor shall the militia of this State be required to do military duty on any day on which any such election shall be appointed to be held.—*Nixon's Digest, Laws of New Jersey*, 1709-1855, page 220.

SEC. 1. No meeting for the election of national, State, district, county, city, or town officers shall be held on a day upon which the militia of the Commonwealth are by law required to do military duty.—*General Statutes of Massachusetts*, 1860, chapter 7, page 58.

SEC. 62. If any officer of the militia parades his men, or exercises any military command on a day of election of a public officer, as described in section 63 of chapter 10, and not thereby excepted, or except in time of war or public danger, he shall for each offense forfeit not less than ten nor more than three hundred dollars.—*Revised Statutes of Maine*, 1857, chapter 4, page 84.

Mr. Chairman, I will now pass to another subject.

TEST JURY OATHS.

In the pending bill we propose to repeal sections 820 and 821 of the Revised Statutes, which I will now read:

SEC. 820. The following shall be causes of disqualification and challenge of grand and petit jurors in the courts of the United States, in addition to the causes existing by virtue of section 812, namely: Without duress and coercion to have taken up arms or to have joined any insurrection or rebellion against the United States; to have adhered to any insurrection or rebellion, giving it aid and comfort; to have given, directly or indirectly, any assistance in money, arms, horses, clothes, or anything whatever, to or for the use or benefit of any person whom the giver of such assistance knew to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States, or whom he had good ground to believe to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; or to have counseled or advised any person to join any insurrection or rebellion, or to resist with force of arms the laws of the United States.

SEC. 821. At every term of any court of the United States the district attorney, or other person acting on behalf of the United States in said court, may move, and the court, in their discretion, may require the clerk to tender to every person summoned to serve as a grand or petit juror, or venireman or talesman, in said court, the following oath or affirmation, namely: "You do solemnly swear (or affirm) that you will support the Constitution of the United States of America; that you have not, without duress and constraint, taken up arms or joined any insurrection or rebellion against the United States; that you have not adhered to any insurrection or rebellion, giving it aid and comfort; that you have not, directly or indirectly, given any assistance in money, or any other thing, to any person or persons whom you knew, or had good ground to believe, to have joined, or to be about to join, said insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; and that you have not counseled or advised any person to join any insurrection or rebellion against, or to resist with force of arms, the laws of the United States." Any person declining to take said oath shall be discharged by the court from serving on the grand or petit jury, or venire, to which he may have been summoned.

I know, Mr. Chairman, that in the heat of partisan strife and under the pressure of party discipline, the fairest of men may at times do that which they would rather not after cooling time be called upon to defend or to justify. But, sir, it is a matter of surprise to me that there should be serious opposition, after so much time for reflection and at this late day, from any quarter or on any pretext, to the repeal of sections 820 and 821 of the Revised Statutes, relating to Federal jurors. One of these sections, 820, on which the other seems to be predicated, was, if I mistake not, repealed in 1870 by the Forty-second Congress, without much if any objection, although both Houses were largely republican at that time.

It somehow happened, however, not by design I am willing to believe, that it was afterward treated in the revision of the statutes as being in force, and there we find it to-day. The Federal judges have so well understood it to be in the revision by error that in some of the districts where it might be enforced it has been treated as a dead letter, as also section 821. In other places, however, it has been and still is to be, it would seem, recognized as in force and as an indispensable test of the qualification of Federal jurors. What has transpired since 1870, what change of condition of persons, parties, or races, that should furnish cause for opposition here and now to the repeal of these sections? Gentlemen on the other side of the House need hardly be reminded that as late as December last the Senate, then republican, without division repealed section 820. Thus we find that it was repealed once by both Houses, and by the Senate, recently, the second time.

It must be the judgment of all persons who fairly and calmly consider this subject that section 820 should be repealed. And if *it* should be taken out of the Revised Statutes, both because it is an obstruction to fair trials and intelligent verdicts as also because it is in force by mistake or accident, why should not section 821 go also. I know that the application or enforcement of the latter section is in the discretion of the court, but this fact as the section reads is an argument against it, for it will be observed that the section does not say, nor is it implied, that a party accused of crime or misdemeanor and about to be tried therefor, shall on his own motion, or on motion of his counsel, have the right to have this test oath applied to petit jurors. It is only on motion of the district attorney, or other person acting on behalf of the United States, that is, on behalf of the prosecution or upon the court's own motion, that this section or the other can be called into use either as to the petit or grand jury.

If section 820 is repealed the causes for challenge named therein will cease to exist as such, no matter whether the case be civil or criminal, and without regard to whether the United States is a party or not. Wherefore, then, sir, as to section 821, as between the citizen and Government—wherefore, I say, shall the latter "in the discretion of the court" or at the option of the district attorney, have an unfair advantage or preference? As to the propriety of keeping these sections in force longer, it is a fair test to ask whether, if they were not now in the statutes, there could be found any considerable number of members of either House who would favor their enactment? The voice of both bodies in that event would in my judgment be found, almost, and perhaps quite unanimous, in the negative.

What is the object of trial by jury? Is it not that the matter in issue or dispute may be passed upon by twelve persons, peers of the litigants and possessed of sufficient intelligence and manhood to return a verdict in conformity with the law and testimony? How can the trial be impartial as guaranteed by the Constitution if the triers are below, and perhaps very much below, a fair average of intelligence and independence? Will it be said that ignorance and prejudice are more likely, under the instructions of the court, to give fair and impartial trials, than intelligence, even if there be with the latter some prejudice? Is it not the experience of every lawyer that in proportion as the juror is capable of comprehending the effect of the facts testified to, and the law as charged by the court, in the same proportion or degree his verdict will be found on the side of law and right? He may not be entirely free from bias, but, sir, as a rule, if intelligent and of character in his community, his manhood will assert itself and his desire not to discredit his own reputation for intellectual capability will make him return a just verdict.

Mr. Chairman, if sympathy for or service in the confederate cause might create or tend to the creation of a disposition to deal unfairly with one whose lot had been cast with the cause of the Union, would not the rule work both ways? How absurd such a statute! No good reason can be given why either of these sections should longer remain in the statutes. And, sir, I ask if at this late day, fourteen years after the war has closed, it was sought to put into operation some sort of Federal machinery that would create and continue bad feeling and discord in the South between parties, neighbors, and races, what method at all plausible on its face, could be invented or suggested better adapted to that end than such statutes?

It is no part of my purpose to speak of the importance and antiquity of trial by jury, especially the importance of trial by jury in criminal cases. The stereotyped language of the books, that the right of trial by jury is the great bulwark of the civil liberties of the people, is not more trite than true and cannot be too often repeated. And, sir, the first and the greatest object of trial by jury is "to guard against a spirit of oppression and tyranny on the part of the rulers."

Nothing tends more certainly to beget dislike and disregard for law and the restraints of government than the belief, and perhaps knowledge, that the law is not impartially administered. Indeed, a statute like section 821 is to my mind clearly unconstitutional, showing upon its face that it cannot or may not be impartially executed. By its very terms there is a discrimination against the accused. In this respect it is akin to the ancient practice of which Blackstone speaks, of not allowing the party criminally charged the privilege of selecting his own witnesses and having them sworn as his witnesses to

testify in his behalf; a practice also which denied to the accused the benefit of counsel in the examination of witnesses, and which did not permit his defense by counsel before the jury. A practice, sir, which was justified on the ground that the judge, like the king, could do no wrong; that he was so pure, just, and impartial that he would see to it that no wrong was done to the prisoner. Sections 820 and 821—they should be treated as one—seem to have been conceived and constructed on the same theory, except that the district attorney, always impartial and disinterested of course, may co-operate with the court in the application of these statutes. I hope, Mr. Chairman, that these irritating and unconstitutional test-oath sections will be repealed.

ELECTION SUPERVISORS AND MARSHALS.

The first clause of section 4 of article 1 of the Constitution reads as follows:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

And here I wish to say that the word "regulations" has no broader or different meaning and relates alone to the times, places, and manner of holding elections, &c. This is evident from the use of the word "*such*."

Something has been said on both sides in the progress of this debate, as to the nature and extent of the power of Congress under this clause. There was some opposition in the convention, and strong objection in several of the State conventions called to ratify the Constitution, to the power thus granted to Congress. It was said that it would be dangerous to the liberties of the people; that it would interfere with a just exercise of their privileges in elections.

Mr. Hamilton, in No. 49 of the Federalist, answering this objection, says:

I am greatly mistaken if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation.

Again, he says:

Nothing can be more evident than that the exclusive power of regulating elections for the National Government in the hands of the State Legislatures would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection.

It is not very clear from the debates in the constitutional convention, and other contemporaneous sources of information upon the subject of the formation of the Constitution, whether it was intended by this clause that Congress should exercise the power thus granted only in the event that the Legislature of the State should fail to prescribe time, place, manner, &c., or whether it was intended to confer upon Congress the right to exercise this power whenever in the discretion of that body it should be deemed best to do so. I am inclined to the latter view, because I can see no uncertainty or ambiguity in the words used. I know that Mr. Hamilton in one place speaks of this power of Congress as an "ultimate" power, but it will be remembered that he was then trying to allay fears that had been excited by Mr. Henry and others, that the power of Congress might be used unnecessarily and unwisely. Mr. Madison, in remarks made in the constitutional convention in support of this clause, speaks of the grant to Congress thereunder as "a controlling power," and Mr. Story calls it a "superintending power."

Some of the States at the time of the adoption of the Constitution proposed that it be so amended that Congress should not legislate on this subject, except when the Legislature of States should refuse or neglect to do so. In the Massachusetts convention a like amendment was proposed but voted down. Several of the States, without asking any change, did however in a very formal manner ask and express confidence, that Congress would refrain from such legislation save as to States omitting it. None of the States, however, proposed to take away from Congress this power. At the first session of Congress under the Constitution, Congress proposed to the several Legislatures certain amendments, but took good care not to suggest any alteration in this particular; although it cannot be denied that it was confidently expected by the framers of the Constitution that Congress would forbear to use this power so long as the States made proper provision by law for the election of Senators and Representatives.

Whatever the power of Congress may be in the matter of prescribing time, place, and manner of holding elections for Representatives, that body has not yet attempted to legislate fully upon that subject. The act of February 2, 1872, requires Representatives to be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants, and equal in number to the number of Representatives to which such State may be entitled in Congress, no one district electing more than one Representative. The same act also establishes Tuesday after the first Monday in November as the day in each of the States and Territories for the election of Representatives and Delegates to Congress, beginning in 1876. The act of February 28, 1871, provides that all votes for Representatives to Congress shall be by written or printed ballots, and that all votes received or recorded contrary to that act shall be of no effect. It cannot be said that these provisions taken together constitute a "*manner* of *holding* elections" for Representatives.

By the act of July 25, 1866, it is provided that the Legislature of each State which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Congress, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress, and that "such election shall be conducted in the following manner," &c. The act then proceeds to prescribe the manner of holding elections for Senators. It cannot be doubted that if Congress had intended to prescribe a manner of holding elections for Representatives to Congress it would have been done, as in the case of Senators, by an act addressed to the subject of the manner, and purporting at least to be full and complete. In almost every State the vote was by ballot, written or printed, prior to the act of February 28, 1871, and therefore in all such States the voting by ballot is a manner of voting prescribed by the States as well as by act of Congress.

The law creating election supervisors and empowering them and United States marshals to attend elections in the States and exercise certain powers, is nothing more nor less than a supervision and intermeddling by Federal power with the manner of holding elections as prescribed by the State Legislatures. As such it cannot be justified, for whatever may be the naked power of Congress under the Constitution, an enlightened public sentiment will not hesitate to say, that if Congress undertakes to control the subject of the manner of holding elections for Representatives to Congress, it should be by an act covering the whole subject of the manner, and not by patchwork and in a way that may lead to disagreement and conflict between officers of election appointed by the State under State law and United States supervisors, marshals, and deputy marshals, who stand by clothed with Federal authority of a character which permits them to interfere with and in effect control a manner of holding the election which the State, and not the General Government, has in all essential particulars prescribed.

Mr. Chairman, the fact is, the States have thus far omitted no important and material duty in this matter, and the laws which we now seek to abrogate are anti-republican, unnecessary, and wholly without justification.

Sections 2011 and 2012 of the Revised Statutes, constituting a part of the Federal election laws, are as follows:

SEC. 2011. Whenever, in any city or town having upward of twenty-thousand inhabitants, there are two citizens thereof, or whenever, in any county or parish, in any congressional district, there are ten citizens thereof, of good standing, who, prior to any registration of voters for an election for Representative or Delegate in the Congress of the United States or prior to any election at which a Representative or Delegate in Congress is to be voted for, may make known, in writing, to the judge of the circuit court of the United States for the circuit wherein such city or town, county or parish, is situated, their desire to have such registration, or such election, or both, guarded and scrutinized, the judge, within not less than ten days prior to the registration, if one there be, or, if no registration be required, within not less than ten days prior to the election, shall open the circuit court at the most convenient point in the circuit.

SEC. 2012. The court, when so opened by the judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the judge, and under the seal of the court, for each election district or voting precinct in such city or town, or for such election district or voting precinct in the congressional district, as may have applied in the manner hereinbefore prescribed, and to revoke, change, or renew such appointment from time to time, two citizens, residents of the city or town, or of the election district or voting precinct in the county or parish, who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of election.

These sections are not disturbed, although they are very objectionable in some respects. The court should not be permitted to act upon the petition of only two persons, or of ten persons. Either number is too small. The court ought not in any event be required to appoint supervisors, unless it should be made clearly to appear that fairness and freedom of election would be promoted thereby. The court should not name the supervisors; this should be done by the political parties of the locality where the supervisors are expected to serve. No other manner of selecting supervisors or challengers can inspire confidence or give satisfaction. The judges of the Federal courts are not elected by the people; they are appointed by the President and are not without political opinions and partisan bias. An upright judge would be glad to be relieved of such a duty. It is wholly out of the line of his usual labors, tends directly to prostitute and tarnish his high office, and withdraw that public respect and confidence which the courts must have to accomplish the purpose of their creation. Especially are these remarks just, when it is considered, that the two sections which follow those cited, require the same court to be kept open until after the election for the "transaction of business" of the same character.

The supervisors thus appointed are authorized and required to attend at all times and places fixed for the registration of voters, and to challenge any person offering to register. They may "mark" for challenge such names as they choose on the registered list. They are required to personally scrutinize, count, and canvass each ballot, and are authorized to attach to the registry list and election returns any statement about the accuracy of the registry, or fairness of the election, or truthfulness of the return made by the election board that they or either of them may desire.

Mr. Chairman, what power can be more arbitrary, dangerous, exasperating to the citizen and autocratic than this? If the party in power wishes to maintain its supremacy in the legislative branch of the Government without regard to right or fairness of election, what machinery could be invented better adapted to that end than this? In close congressional districts, the statement made by the supervisor

and attached to the election return could be adopted as the truth, and in a contest the seat be given to the candidate of the party in power.

It will not do to say that this could not be, because of the fact that the two supervisors are required to be of different political parties. It is well known how, in politics, these things can be managed. The court appoints the supervisors, and can select such material as will be most acceptable to the party managers with whom it is in sympathy. A corrupt judge would need no advice upon this point. He would see to it that the supervisors were men who could be controlled in the interest of party, and thus he would keep the secret of his corrupt motive locked up in his own breast.

Whenever an election, at which Representatives or Delegates in Congress are to be chosen, is held in any city or town of twenty thousand inhabitants or upward, the United States marshal for that district is required, upon the application in writing of two citizens, to appoint special deputy marshals to aid and assist the supervisors of election in the discharge of duties with which they are charged. They are required to be present at the polls in such city or town.

These deputy marshals may be appointed without limit as to number, and must be appointed, although not more than two citizens may ask it. They are not required to be taken from both political parties, and the testimony taken upon this subject by committees of Congress establishes the fact that they are selected from the republican party, except when democrats are appointed with the understanding that they are to vote the republican ticket. These deputy marshals are paid $5 per day so long as they are on duty, not exceeding ten days. Mr. Chairman, a few figures at this point in my remarks will be of interest and instructive.

In the years 1876 and 1878, there were appointed 9,744 supervisors and 16,335 deputy marshals, and for this taste of ballot-box despotism the people have paid, including compensation of chief supervisors and United States commissioners for services under election laws in New York City, the sum of $508,635.51. This amount does not include the southern district of New York for 1878. The city of New York is in that district. The Secretary of the Treasury has informed the Senate that the account from the chief supervisor from that district has been received, but has not been adjusted. This will of course add very largely to the figures which I have just given.

Mr. Chairman, testimony which has been taken shows that a large percentage of the deputy marshals are taken from the lowest strata of society, and this fact can only be accounted for upon the theory that rough and desperate men were wanted to intimidate and deter the weak and timid.

The marshal and his deputies are authorized to prevent fraudulent registration, fraudulent voting, and fraudulent conduct on the part of any officer of election. They are empowered in their own discretion to arrest without process, either before or after voting, persons who in their presence, register or vote or attempt to register or vote unlawfully. They are the sole judges whether the law is violated or not. They may then arrest the voter, although the election board may have decided that he was a legal voter, and they may at once arrest the judges, inspectors, and clerks of the board if in their opinion these officers in their presence have been guilty of fraudulent conduct in receiving or refusing to receive a vote, or in doing, or in omitting to do anything pertaining to the election. The persons thus arrested are forthwith taken before a commissioner, judge, or court of the United States, there to be proceeded against as "in case of crimes against the United States." Thus the State courts are not permitted to interfere at that time, although if there be a violation of law at all, it is of a State law.

But the crowning infamy of this legislation is that there is no penalty or punishment provided for those who abuse or wrongfully and oppressively make use of this authority with which they are invested. It would seem, sir, that this omission was intended as an intimation to these Federal overseers of a free and proud-spirited people, that the elections must be carried at all hazards in favor of the political party from which their employment came.

Mr. Chairman, there is another objection to these statutes which to my mind is of the very first magnitude. It will be borne in mind that they are justified and claimed to be within the constitutional power of Congress, because they relate to the elections held for Representatives to Congress. But, sir, is it not true that wherever State officers and Representatives to Congress are voted for on the same day and on the same ticket, these laws of necessity affect the election of the former in the same degree as the latter? In most of the States members of the Legislature and other State and county officers are voted for on the same day and on the same ballot with candidates for Congress. Not only is this the fact, but Congress has by legislation encouraged this arrangement, and it will not be long until this will probably be the rule in all the States.

To illustrate how these laws may be diverted in their operation from their professed purpose, take for example a congressional district in which one of the political parties has a majority so large that there can be no doubt about the result. In the same district, however, there may be, and always are, members of the State Legislature, State and county offices to be elected. The result as to the candidates for these places could be greatly influenced by a few score of well-paid supervisors and marshals actively at work over the district arresting, "marking," and imprisoning citizens *before* they voted.

Ought these thousands of supervisors and marshals, appointed and working in the interest of the party in power, be added to the one hundred thousand Federal office-holders, who at every general election well understand what is expected of them, and therefore while under pay from the people at large, devote every energy of body and mind to maintain the supremacy of the party that commands their services? Will the people say that the party in power, of whatever political faith, should have additional and more effective facilities for carrying the elections?

Mr. Chairman, after some of these laws are amended, and others repealed, as we propose, the United States statutes will still contain over forty sections, enacted especially to protect voters and prevent fraud at elections. These statutes are of the most stringent, searching, and penal character; human ingenuity could not devise methods and punishments more satisfactory to the greatest extremists upon the subject of elections.

As a fair sample of the sections which will be left I read as follows:

SEC. 5511. If, at any election for Representative or Delegate in Congress, any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living, dead, or fictitious; or votes more than once at the same election for any candidate for the same office; or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote; or does any unlawful act to secure an opportunity to vote for himself, or any other person; or by force, threat, intimidation, bribery, reward, or offer thereof, unlawfully prevents any qualified voter of any State, or of any Territory, from freely exercising the right of suffrage, or by any such means induces any voter to refuse to exercise such right, or compels, or induces, by any such means, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interferes in any manner with any officer of such election in the discharge of his duties; or by any such means, or other unlawful means, induces any officer of an election or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty or any law regulating the same; or knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote, or aids, counsels, procures, or advises any such voter, person, or officer to do any act hereby made a crime, or omit to do any duty the omission of which is hereby made a crime, or attempt to do so, he shall be punished by a fine of not more than $500, or by imprisonment not more than three years, or by both, and shall pay the costs of the prosecution.

Certainly these remaining statutes, and the great body of State laws relating to the elective franchise, furnish all that is needed. The laws of the States alone were relied on and found to be ample, until the colored man became a voter, and the republican leaders resolved that his color was a mark by which he should be known as the property of the republican party, and that if he did not vote the ticket of that party, his vote should not be counted at all.

Mr. Chairman, I cannot occupy further time. These laws cannot be defended; they are unjust, tyrannical, and in irreconcilable antagonism with the spirit and genius of republican government.

The Separation of the Bayonet from the Ballot—Impartial Trials by Unpacked Juries, and Free and Pure Elections.

SPEECH OF HON. W. G. COLERICK,

OF INDIANA,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 24, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. COLERICK said:

Mr. CHAIRMAN: It is not my purpose or desire to discuss questions involving the constitutionality of the laws that the bill now under consideration seeks to repeal or modify, as those questions have been ably and elaborately presented and discussed in all their features by the distinguished gentleman from Kentucky, [Mr. CARLISLE,] and other gentlemen on this side of the Chamber, and have not been fairly met or answered by gentlemen on the other side. I desire to devote my time to a discussion of those sections of the election law that authorize the appointment of depnty marshals and define their powers.

We must not forget that this law is the creature of the republican party and sprang into life when that party dictated and controlled the legislation of the country, and that it was ingeniously contrived and designedly created by the cunning and shrewd managers of that party to prolong and perpetuate its power. They well knew that their party by its maladministration of the Government and the corruption of its leaders had justly forfeited the confidence of the people, and that the time for its forced and unwilling surrender of power was surely and rapidly approaching. Their intense love of power and insatiable greed for the spoils of office inspired and prompted them to devise some plan by which they could "hold the fort," and governed by this unworthy motive and impelled by this selfish desire they rashly determined, regardless alike of common honesty and constitutional liberty, to stifle the voice of the people at the ballot-box by the use of the glittering bayonet in the South and venal and corrupt supervisors and deputy marshals in the North; and the plan so conceived was consummated by the enactment of this infamous

law, which, coupled with that law that authorizes the presence of soldiers at the polls under the pretense of preserving the peace, enables that party, as intended and designed by its leaders, to carry elections whenever necessary by force and fraud.

The powers conferred by these laws on supervisors, marshals, and armed soldiers are incompatible with the theory and form of our Government and the spirit and letter of our Constitution. They are in their nature subversive of the liberties of the people, who, in their innate love and zealous devotion for constitutional liberty earnestly desire and peremptorily demand the repeal of these laws, and we, as the Representatives of the people, will be unfaithful to them, untrue to ourselves, and recreant to the sacred trust confided in us, if we, through fear or favor, refuse or fail, now and here, to exert our power in obliterating them from the statute-book. Sir, the people do not need or desire such laws as these, which so long as they exist will constitute perpetual menaces to their liberties. They want no more soldiers at the polls. They want no more supervisors, marshals, returning boards, electoral commissions, or other like political monstrosities that have been created by the republican party within the last few years to maintain its supremacy in defiance of the will of the people. They desire to revive and restore again the forms and modes of election that existed in the better and purer days of the Republic, and place them under the sole supervision of the States, where the power to control and regulate elections constitutionally belongs, and from which no departure ever occurred from the time of the formation of the Government until these modern innovations, under the auspices of the republican party, for base partisan purposes, transpired.

If the republican party believe that it is essential to its success to employ in its service spies and informers to discharge the duties now performed by deputy marshals under this law, it has the right to employ them, and will involve merely a matter of taste, but it must pay them out of its own treasury, that overflows with the money realized by its political assessments and forced contributions from its army of Federal office-holders, now numbering over one hundred thousand, and not out of the public Treasury with the people's money. Justice to the people, now groaning under the weight of heavy taxation and debt, forbids our placing upon the pay-roll of the country the ward workers, electioneerers, and ticket peddlers of the republican party in the disguise of deputy marshals, although we have been solemnly warned that if we destroy this "political machine" invented by the republican party for partisan purposes it will result "in starving the Government to death," from which I infer that the republican party considers itself "the Government," as the only starvation that can possibly occur by the repeal of this law will merely affect that grand army of republicans called deputy marshals, who are in some measure dependent upon the Government, through the favor of the republican party, for their support.

Mr. Chairman, this Government will never perish by starvation if we can avert such a calamity. We propose to furnish all the money needed for its support. The appropriations made by this bill are conceded to be ample and liberal, and if they are rejected by the President because we will not debase and humiliate ourselves by suffering to remain on the statute-book certain political legislation placed there by the republican party as partisan measures to perpetuate by force and fraud its power, when we know that those laws are unconstitutional and subversive of the liberties of the people, and that it is our right and duty and within our power to repeal them, then let the responsibility rest upon the President and his party, and upon that issue, which will involve the separation of the bayonet from the ballot, impartial trials by unpacked juries, and free and pure elections, we can with confidence appeal to the people.

Sir, no President has ever vetoed an appropriation bill because it contained general legislation, and we have no right to assume or believe that this bill will not receive the approval of the President. Why should we permit ourselves to indulge for a moment in the supposition that he will veto it. It violates no provision of the Constitution, but, on the contrary, more firmly and securely guards and protects the rights guaranteed by the Constitution to the citizen. It reduces public expenditures and will save millions of dollars to the people now burdened with taxation and debt. Its provisions are so just and commendable, and so free from constitutional objection, that I cannot believe that it is possible that the President will assume the grave responsibility of defeating the bill by his veto.

Some of the leaders of the republican party manifest great solicitude for the Constitution and express grave apprehensions that we may, by our legislation, violate its sacred provisions. Their respect for the Constitution is of very recent origin. A few years ago they treated it with contempt and derision and trampled it under their feet, and all appeals by the citizen to the Constitution for the protection of the rights guaranteed to him by its provisions were denied, and all references to the Constitution provoked their anger or excited their mirth. Gentlemen, your pretended fears are unfounded and will never be realized. You can safely commit the Constitution to our care. As we defended it in the past against your assaults, so will we protect and defend it in the future, in peace and in war, against all assaults. It has always been and is now our political bible. We know no "higher law" than the Constitution, and our devotion and veneration for it is boundless and immeasurable.

Mr. Chairman, our republican friends say that it is wrong, revolutionary, and subversive of the Government to legislate in the manner proposed, by attaching to an appropriation bill a provision changing an existing law. Is this true? Rule 120 of this House, which was adopted many years ago, provides:

> No appropriation shall be reported in such general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject-matter of the bill, shall retrench public expenditures.

Now, if those provisions inserted in this bill which seek to repeal or modify the law creating supervisors, marshals, and deputy marshals at elections are germane to the subject-matter of the bill and retrench public expenditures, then our power and right under this rule to change that law in the manner proposed cannot be successfully denied and ought not to be questioned. That these provisions are germane to the subject-matter of the bill has not been seriously disputed, nor can it be, because the purpose of the bill in part is to appropriate money to defray the expenses of United States courts and marshals, and it has heretofore been customary and required in bills like this to include as a part of such expenses an amount sufficient to pay the supervisors, marshals, and deputy marshals who under this law are appointed by the United States courts and marshals. This brings us to the other question, will these provisions, if adopted, retrench public expenditures. The official records show that hundreds of thousands of dollars have been paid out of the public Treasury to pay these officials. The statement which I hold in my hand and ask to have printed as a part of my remarks, shows the number of those officials in 1876 and 1878, and the amounts paid to them, as far as the same has been made known to the public. It shows that for the years 1876 and 1878 the sum of $513,635.51 was paid out of the public Treasury to these officials, numbering over twenty-six thousand, for the services rendered by them.

Sir, unless this law is changed, as proposed by this bill, like or greater sums will be paid in the future to these officials by the Government, and it is for the purpose of retrenching these expenditures, and saving to the people the enormous sums that are uselessly paid to these officials that the provisions in this bill to which objection has been made by the republican party have been inserted. But independent of the rule of this House to which I have referred, and which clearly justifies our action, I submit that the republican party is estopped from denying the right or propriety of attaching such legislation to appropriation bills. The records show that from July 5, 1862, to March 3, 1875, during all of which time that party controlled both branches of Congress, three hundred and eighty-seven acts of general legislation of every conceivable character were attached to appropriation bills passed by Congress. By one of these acts attached to the Army appropriation bill which was passed March 2, 1867, Andrew Johnson, then President of the United States, who had incurred the displeasure and hostility of the republican party because he was true and faithful to the Constitution and the people, was deprived of his powers as Commander-in-Chief of the Army. The provision inserted in that appropriation bill provided, "that any orders or instructions relating to military operations," issued by him "shall be null and void," and "any officer of the Army who shall transmit, convey, or obey any orders or instructions so issued * * * shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction."

Although the provisions so incorporated in that bill were intended by the republican party to degrade and humiliate him and divest him of constitutional power, he approved the bill, and by his approval it became a law, and yet in the face of this record the republican party denounce us, and declare that we are attempting to compel the President to approve legislation that is distasteful to him by embodying it into an appropriation bill, and that such legislation is revolutionary. It was not revolutionary for them in 1867 to require Andrew Johnson to approve a bill containing an affirmative act of legislation that affected him personally by depriving him of the right to exercise powers granted to him by the Constitution; but it is revolutionary for us in 1879 to require Rutherford B. Hayes to approve a bill that merely repeals a statute in which he has no personal interest, as it neither affects nor involves any of his rights, privileges, duties, or powers. Can the republican party honestly or consistently declare that it is revolutionary for us to adopt and follow the same course pursued by that party as long as it controlled Congress in attaching general legislation to appropriation bills? If it is revolutionary to do so now, it was equally so when that party controlled the legislation of the country.

Why, sir, in 1856 the republican party had a majority in this House, and it became its duty to prepare and pass the necessary appropriation bills. In preparing the Army appropriation bill they inserted a provision that the Army should not be used for certain purposes therein named, which provision they knew was objectionable to the President, and if presented to him as an independent measure would be vetoed; but the bill containing that provision was passed and sent in that form to the Senate for its concurrence, where objection was made to the provision that had been so ingrafted into the bill, and the Senate refused to concur in its passage unless that provision was stricken out. The objection that was made to the bill in the

Senate presented the same question that confronts us to-day—whether the House of Representatives, in which all appropriations must originate, possesses the power and right to make appropriations upon condition. What did the fathers of the republican party then and there declare upon this subject? The record will tell us. It shows that Henry Wilson, of Massachusetts, afterward Vice-President of the United States, and who deservedly enjoyed the full confidence of the republican party, said:

It seems to me that the provision now proposed to be stricken out by the Committee on Finance is a legitimate proposition, and one which the House of Representatives had an undoubted right to incorporate into the bill. * * * Must the people's House of Representatives sit with their arms folded, and although the Constitution of the United States confers emphatically upon them the power to originate all revenue bills (which comprises the power to place these grants of money on such condition as they see fit,) must they refrain from exercising their authority in an emergency like this? Is this the liberty of the American citizen that the people's House, where there really is a representation of the people, where the wisdom of the fathers placed the taxing power, are leading to revolution by annexing a condition to the appropriation of the people's money? * * * I say that the House of Representatives have done right. * * * Here we are told that it is revolutionary, and therefore we must not breathe the breath of life into their action, but must permit it to go back to the House with an appeal to the House to recede. Sir, I do not know but that you may succeed under the idea that this is revolution, but, so help me God, I hope that the man who proposes to recede a hair's breadth from the action of the House will never find his way back again, and I do not believe he will.

William P. Fessenden, afterward Secretary of the Treasury and a member of President Lincoln's cabinet, and one of the ablest and most conservative men in the republican party, then declared, in responding to Mr. Hunter, of Virginia:

Does he not know well that in the English Parliament from the earliest times not only have appropriation and revenue bills gone together, but in cases without number it has been the habit of that Parliament to check the power of the Crown by annexing conditions to their appropriations of money? It is not only not a new thing, but a very common thing, in the history of all parliaments. Does he not know that the only mode in which our ancestors of Massachusetts checked the powers of their royal governors was by granting money only on conditions? The power of supply and the power of annexing conditions to supply have always gone together in parliamentary history; and their joint exercise has never been denounced as a case of revolution, or calling for revolution, or tending to produce revolution in any shape or form whatever.

Sir, it is a power essential to the preservation of our liberties.

Mr. President, I have been surprised at the positions taken by honorable Senators on the other side. I know that no man is more learned in the history of parliaments, especially with regard to money grants and money powers, than the honorable Senator from Virginia, [Mr. Hunter,] and yet he gravely argues that the House of Representatives—the power exclusively invested by the Constitution with the prerogative of raising money—not exclusively of expending it, I grant, but still from the very nature of its existence, as deriving its powers more immediately from the people, and from the short term of office which it holds, and its frequent return to the people, necessarily more trusted by the people, with reference to the expenditure of money, than we are—and a House elected with reference to this particular measure has not the power, without committing a revolutionary act, to say that the funds which it grants, and is willing to grant, must be restrained to effect what it believes to be constitutional and legal and proper objects in their application. When I hear him say this I am astonished, because he goes counter to all the history of money grants by free parliaments from the creation of the world down to the present time.

It is the only protection we have, unless we choose to do in fact what the gentleman from Virginia says we must necessarily be considered as doing when we affix any condition of this kind to a grant of money—initiate a revolution.

We do not wish to dissolve this Government; but unless we would destroy it we must point out the mode in which the money we grant is to be used, or else submit to any use of it that the Commander-in-Chief may choose to select. It is the peculiar prerogative and right of Congress to control the Commander-in-Chief of the Army and to control the Army which they raise. Do gentlemen argue here that our only business is to make the appropriations for the support of the Army and not question the use that is to be made of them? that we cannot annex any conditions to our grants of money—a power that has always been claimed as essential to freedom from the beginning of English liberty, which we inherit, and from the beginning of legislation in this country? Sir, the idea that we cannot annex conditions of that kind restraining the power of our military officers is a notion that if admitted would reduce us to worse than colonial bondage.

William H. Seward, afterward Secretary of State and a member of President Lincoln's Cabinet and one of the most distinguished statesmen of this country, said:

Since the House of Representatives has power to pass such a bill distinctly, it has power also to place an equivalent prohibition in any bill which it has constitutional power to pass. And so it has a constitutional right to place the prohibition in the annual Army appropriation bill.

I grant that this mode of reaching the object proposed is in some respects an unusual one, and in some respects an inconvenient one. It is not therefore, however, an unconstitutional one or even necessarily a wrong one.

It is a right one if it is necessary to effect the object desired, and if that object is one that is in itself just and eminently important to the peace and happiness of the country or to the security of the liberties of the people.

* * * * * * *

The House of Representatives, moreover, is entitled to judge and determine for itself whether the proceeding is thus necessary, or whether the object of it is thus important.

Sir, in view of the constant practice of the republican party when these legislative Halls were under its control in ingrafting into appropriation bills provisions changing existing laws, and basing its right to do so upon the grounds so clearly stated and zealously contended for by the founders and recognized leaders of that party in the Senate in 1856, we may well express our surprise at the course now pursued by that party, and doubt its sincerity in denouncing us for exercising the same right and power.

Mr. Chairman, let us examine those sections of the election law that authorize the appointment of deputy marshals and define their powers. I desire to show the unjust and arbitrary powers that are conferred upon these officers and the manner in which they have abused those powers. The sections that I refer to are numbered 2021 and 2022, and read as follows:

SEC. 2021. Whenever an election at which Representatives or Delegates in Congress are to be chosen is held in any city or town of twenty thousand inhabitants or upward, the marshal for the district in which the city or town is situated shall, on the application, in writing, of at least two citizens residing in such city or town, appoint special deputy marshals, whose duty it shall be, when required thereto, to aid and assist the supervisors of election in the verification of any list of persons who may have registered or voted; to attend in each election district or voting precinct at the times and places fixed for the registration of voters, and at all times and places when and where the registration may by law be scrutinized, and the names of registered voters be marked for challenge; and also to attend, at all times for holding elections, the polls in such district or precinct.

SEC. 2022. The marshal and his general deputies, and such special deputies, shall keep the peace, and support and protect the supervisors of election in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at the place of registration or polling place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who commits, or attempts or offers to commit, any of the acts or offenses prohibited herein, or who commits any offense against the laws of the United States; but no person shall be arrested without process for any offense not committed in the presence of the marshal or his general or special deputies, or either of them, or of the supervisors of election, or either of them, and, for the purposes of arrest or the preservation of the peace, the supervisors of election shall, in the absence of the marshal's deputies, or if required to assist such deputies, have the same duties and powers as deputy marshals; nor shall any person, on the day of such election, be arrested without process for any offense committed on the day of registration.

It will be observed that the number of deputy marshals that may be appointed is not limited, and is in practice controlled by the exigencies and desires of that political party in whose interest they have always been appointed. These deputy marshals have full power to arrest and take into custody, either at the place of registration or election or elsewhere, and either before or after registration or voting, with or without warrant, any person who, in their biased and partisan judgments, has fraudulently registered or voted or has attempted or offered to do so. These officers are usually if not always selected from the lowest and most degraded elements of society, and although morally and financially irresponsible, they are not even required to take an oath to faithfully and impartially discharge their duties, nor is any bond exacted from them, which oath and bond if required and exacted might possibly tend to render them more cautious in interfering with the liberty of the citizen and operate as restraints upon the improper exercise of their powers. They may, and in fact do, with perfect impunity and without fear of prosecution civil or criminal, perpetrate the grossest abuses and wrongs upon citizens for the redress of which the law affords no remedy. These men are liberally paid out of the public Treasury with the people's money for the services that they render for and in the interest of the republican party, which give to them their positions, and to which party they belong and owe their political allegiance, and in their unbounded gratitude to that party for the honors and emoluments conferred upon them they act in the performance of their official duties as bitter partisans. Can we expect these men, who on election day are mustered into the service of the republican party and placed upon the pay-roll as "deputy marshals," to discharge impartially their duties? Do they arrest republicans for fraudulent registration or voting? If any such arrest ever occurred it has not been reported. No; they are not appointed for that purpose; they keep the way to the ballot-box free and unobstructed to those who vote the republican ticket, and in their devotion to the republican party they seem to be impressed with the idea that their sole mission is to arrest and imprison only those voters that they suspect intend to vote the democratic ticket; and when they arrest such voters they detain them just long enough to prevent them from voting, and having thereby accomplished the purpose for which they were appointed they liberate them, and the persons so arrested and deprived of their liberty and prevented from exercising the highest and most precious right conferred upon the American citizen are afforded no redress for the great and grievous wrongs perpetrated upon them by these officials under the sanction and authority of law. I have not misstated the character of the men who are appointed to execute this law. Why, sir, at the present session of this Congress a committee was appointed by the Senate to investigate this subject, and for that purpose they visited the city of Philadelphia, and in the investigation that occurred there a great number of witnesses were examined as to the character of the men who had been appointed to execute this law in that city, and from the evidence so rendered the following statement, which contains the names, occupations, and character of the men who were appointed for that purpose, and the manner in which they performed their duties, has been compiled.

Charles Oliphant, marshal second division, Twentieth ward, drunk on election day and insulting voters; seized Mr. Hackenberg without cause.

Charles Herr, marshal second division, Twenty-ninth ward, character and reputation bad; had been arrested for crime. On election day he arrested a voter, who was released by Judge Hare and voted. Herr wore a badge, and solicited votes as a republican.

Arthur Vance, marshal eighth division, Fifth ward, arrested Hutchinson, a voter without cause. Vance was a notorious republican worker.

John Homeyard, marshal sixth division, Sixth ward, drunk, and arrested voters without cause; drew a club on a democrat for challenging a negro repeater. The police blocked up the poll, acted in concert with Homeyard, and brought voters to polls. Homeyard vouched for republican voters and distributed republican tickets. Shriver, a United States revenue officer, kept republican window-book.

J. R. Deshio, marshal first division, Fifth ward, drunk all day; too drunk to ar-

rest any one. There were five policemen at these polls. Desano never voted in that division before that day.

James Brown, marshal fourteenth division, Fourth ward, record of his conviction in 1872 for voting illegally, produced. Proof was made that he voted twice on the same day.

* * * * * * *

Joseph Hilferty, marshal twenty-first division, Second ward, held the republican window-book all day and electioneered; threatened to arrest the democratic United States supervisor for procuring bail for a legal voter who had been arrested.

William McGowan, marshal twenty-third division, Second ward. A policeman blocked up the voting-window, and a democratic United States supervisor ordered him away, when McGowan and the policeman seized him and locked him up in the station-house on a charge of interfering with officers. The case was never tried. McGowan is employed in the gas office and paid by the city.

Philip Madden, marshal Fourth ward, one of the most dangerous men in the city; has been in prison twice, once for highway robbery and the second time for shooting a colored boy.

Francis McNamee, marshal Eighth ward, had been arrested for five different robberies.

Andrew Lenoir, marshal First ward, a warrant has been issued for him for larceny.

Daniel Reading, marshal First ward, a bad and dangerous man; had been tried for murder.

Henry Pitts, marshal Seventh ward, a colored man who keeps a gambling-house and been arrested twice; distributed republican tickets and vouched for voters.

R. S. Stringfield, marshal Fifteenth ward, had been tried for shooting a man; character very bad.

Michael Slavin, marshal Fifth ward, a thief and notorious repeater; had been arrested for subornation of perjury but never tried.

Enoch Baker, marshal second division, Third ward, arrested John Carroll, a legal voter, without cause, and locked him up; Carroll was discharged after a hearing.

J. Roberts, marshal sixteenth division, Third ward, arrested John Johnson, a legal voter, and locked him up all night; case never tried. Roberts electioneered for the republican ticket; was a clerk in the gas office and paid by the city; there were also twelve to fourteen policemen at that poll all day, and they blocked up the poll.

Andrew Jackson, marshal twenty-second division, Thirtieth ward, employed in the gas works under the city. Ackerman, republican judge of elections, acted as United States supervisor and judge, and refused to vacate the place of judge after written orders by Marshal Kerns and Judge Elcock. Jackson arrested Feeny, who had been legally appointed judge, and took him away from the polls. Did not return to get possession until 2 p. m.

James Calligan, marshal eighth division, Sixth ward, so drunk in the afternoon he could not walk; seized a qualified voter by the collar and staggered with him against the wall; policeman brought a repeater to the polls, who was arrested, as was the policeman.

Henry Scott, marshal second division, Seventh ward, a man of bad repute; colored; keeps a low drinking-house; electioneered and gave out tickets and tax receipts; was inside at the counting of the vote, and took tickets out of the box; only 5 votes came out for the democratic candidate for Congress; democratic overseer contested this, and Scott allowed 17 to be counted for him.

Thomas Donlan, marshal seventh division, Sixth ward, an habitual drunkard, and a graduate of house of correction for this; was drunk all day.

William D. Barth, marshal, same place, blocked up the voting window and would not allow legal voters to come to it; there were two United States marshals and six policemen at this poll.

John Archer, marshal twenty-seventh division, Nineteenth ward, acted as United States supervisor; was on both lists and paid as both officers; when a marshal wanted during the day to arrest a republican repeater he did not make known that he was a deputy marshal; had no badge; heavy republican division; no policemen there.

William Springfield, marshal thirty-second division, Twenty-fourth ward, arrested a legal voter and took him to the magistrate's, where he was discharged; Springfield was discharged from employment the day before election for stealing.

Charles Male, marshal seventh division, Eleventh ward, keeps a house of prostitution.

Abraham Hoffman, marshal Eleventh ward, a repeater, and had kept a house of prostitution within a year; a thief.

William Eckenbrim, marshal Eleventh ward, arrested for larceny; bill ignored.

David Beckman, marshal thirty-second division, Nineteenth ward, held the republican window-book and electioneered; threatened to put the democratic United States supervisor out of the room for challenging a voter; the vote was rejected, and the voter did not return.

—— Fleming, marshal sixth division, Eighteenth ward, distributed republican tickets and challenged voters; a legal vote was rejected on his challenge; intimidated many democratic voters.

William Boehm, marshal eighteenth division, Twenty-ninth ward, plug inspector, and paid by the city; electioneered and distributed republican tickets.

Charles Prenderville, marshal seventeenth division, Fifth ward, arrested a legal voter; case never tried; electioneered for republicans all day.

This was the record of a two days' investigation at Philadelphia.

These individuals represent the class of men that have been appointed supervisors and deputy marshals by virtue of this law to maintain peace and order at the polls, guard the sanctity of the ballot-boxes, prevent frauds, preserve the purity of the ballot, and honestly supervise the counting of the votes. In view of the character of these men, and the nature of the offenses committed by them, which embrace nearly every crime known to the law, no person need hereafter entertain or express any surprise at the fact that the republican party, in whose interest these men were appointed and acted, maintains its supremacy in that city. The infamy of these men peculiarly qualified them to execute this infamous law. Oh, how the hearts of the managers of the republican party in that city yearn for pure, fair, and honest elections, and an untrammeled and uncontaminated ballot! But their pretended reverence for the purity and sacredness of the elective franchise is exposed by the fact that when they secured the supervision of the election there they committed the ballots cast by American freeman, that should be guarded as zealously as priceless jewels, to the control of convicted felons and men of the most vile, corrupt, and degraded character, whose presence alone was sufficient to generate corruption, and whose vicious lives, blackened by the infamy of their crimes, excited the just and grave apprehensions of honest men that they were placed there to tamper with the ballots. Why were such men selected to perform such responsible and sacred duties, the honest performance of which required men of the highest personal character and undoubted integrity? And why such sad and heartrending lamentations by the leaders of the republican party over the proposed repeal or modification of this law? It is safe to assume that the same kind of men have been appointed elsewhere under this law to perform like duties. This law, by reason of the manner in which it has been executed, if for no other reason, should be repealed.

Sir, look at the manner in which it has been executed in the city of New York. We all know that the State of New York is, and has been for many years past, a democratic State. The republican party knowing this determined in 1878, through the aid of this law, to regain by unfair means its lost power in that State, and to produce that result they secured the appointment of one John I. Davenport, a bitter and unscrupulous partisan, as chief supervisor of the elections in that city, and by and under his management, aided by thirteen hundred and fifty deputy marshals, they accomplished their purpose. How was it done? Why Davenport just on the eve of the election filed nearly ten thousand complaints against legal voters of that city, wherein he charged them with fradulently registering their names as voters, and upon which complaints he caused twenty-eight hundred warrants to be issued for the arrest of these citizens and thereby he frightened and deterred thousands of legal voters from voting.

The persons against whom these complaints were filed and warrants issued were all of foreign birth—Germans, Irishmen, Frenchmen, and other citizens who had been naturalized ten years before that time—men who had felt the oppressive yoke of tyranny in their native countries, and had come to America, "the home of the free and the land of the brave," to enjoy the blessings of civil and religious liberty, and many of whom had by their industry, thrift, and enterprise, and the fruits of their genius and labor, contributed greatly to the wealth, beauty, and grandeur of that great metropolis; and although guiltless of any crime they were pursued and hunted down like criminals, and stripped of their naturalization papers that constituted the evidence of their citizenship, by Davenport and his army of paid spies and informers, who had enlisted for that purpose into the service of the republican party. These papers were taken from these citizens to prevent them from voting, and those who had the nerve, courage, and manhood to resist the unlawful demands and assert their rights by refusing to surrender to this tyrant and his minions the papers that entitled them to exercise the rights of American freemen, were arrested and imprisoned and denied an opportunity to vote unless they agreed to vote the republican ticket, and by agreeing to do this their papers were held to be valid and entitled them to vote, otherwise illegal and void. There were forty thousand persons in that city who had been legally naturalized by the courts in 1868, and held certificates showing that fact, and which constituted them citizens. As a matter of course nearly all of them were democrats and intended to vote the democratic ticket, which Davenport considered a heinous offense, and for the purpose of preventing the commission of such crimes he made a sweeping and indiscriminate seizure of the certificates of naturalization held by these persons. He then well knew that these certificates were valid, and had been so adjudged by the courts; but what did he care for the law or the judgment of courts when the success of the republican party, in whose interest he was acting, would be imperiled by permitting these "foreigners" to vote. He knew that each certificate that he could capture or secure from the legal holder was equal to one vote for the republican party. He knew that each voter that he could deter from voting by threats of prosecution would count a vote for that party. He knew that the arrest and imprisonment of a democrat holding one of these certificates would result in preventing him from voting against the republican party. Knowing all this, and fully appreciating the fact that under this law he possessed ample power to arrest, with or without warrant, any person and all persons that he desired, and that the Federal Administration, which he had been taught to believe by the teachings of the republican party was the Government, would protect and defend him, and that there was no power in the State to punish him, he assumed and exercised on that day, in that great city, the powers of an autocrat. He caused at his pleasure hundreds of good citizens to be arrested without warrant and without cause, and to be dragged like criminals to his august tribunal, where they were detained and held as prisoners until it suited his convenience to discharge them, which usually took place after the close of the polls. He fixed and determined the qualifications of voters, and decided who should and who should not vote. By such outrages as these upon liberty and justice, and disfranchising thousands of legal democratic voters, he won for the republican party an inglorious triumph in that State. The scenes that occurred at the headquarters of John Davenport on that day mar and soil the pages of American history, and their recital should cause all good citizens and lovers of liberty to bow their heads in shame and humiliation. Those scenes are thus described by an eye-witness:

Such a scene as the rooms of this court presented on that election day has never before been witnessed in this city or in this country, and it is to be hoped never will again. From early morning until after the polls were closed these rooms were packed and jammed with a mass of prisoners and marshals. Not only were they crowded beyond their capacity, but the halls and corridors were thronged with those who were unable to obtain admission, so that the counsel representing the prisoners and the bondsmen who were offered to secure their release had the greatest difficulty, and were frequently unsuccessful in obtaining entrance. In addition to all this was that delectable iron "pen" on the upper floor, in which men were crowded until it resembled the black hole of Calcutta, and where they were kept for hours hungry, thirsty, suffering in every way, until their cases could be reached. With scarcely an exception these men had gone to the polls expecting to be absent but a short time. Many of them were thinly clad; numbers had sick wives or relatives; some were sick themselves. There were carmen who had left their horses

standing in the public streets; men whose situations depended on their speedy return; men who wished to leave the city on certain trains. Every imaginable vexation, inconvenience, injury, and wrong which the mind can conceive existed in their cases, so that it was painful for the counsel who were endeavoring to secure their release to approach sufficiently near the railing to hear their piteous appeals and witness the distress which they had no power to alleviate. And over all this pushing, struggling, complaining crowd Mr. Commissioner John I. Davenport sat supreme, with a sort of oriental magnificence, calmly indifferent to everything but the single fact that no man who was arrested was allowed to vote.

A committee was appointed by this House to investigate this matter, and when Davenport appeared before that committee he attempted to justify the outrages that he had committed upon American citizens, and used as a shield for his protection this infamous law. He boastingly declared to the committee, in referring to the naturalization papers that he had seized, that "by the most persistent and continued attacks upon such papers, the arrest of hundreds of those who held them, the seizure of their papers, and other means, I have succeeded in reducing the number in circulation in this county from about forty thousand to ten thousand." Although he caused the arrest of hundreds of persons who held these certificates, yet he never brought one of those men before the courts for trial. Hear what he says as to this:

Question. Have all the warrants that have been issued in this city for a violation of the election laws on those naturalization papers been issued under your direction?

Answer. I believe they have since 1868.

Q. How many cases have been tried on those 1868 papers?

A. I do not know of any.

Sir, if these men were guilty of any fraudulent act in voting or attempting to vote, why were they not tried and punished? Because Davenport knew that their certificates were valid and constituted the persons in whose favor they were issued legal voters, and that the arrests had been made merely for the purpose of preventing those persons from voting. The objection that he pretended to urge against the legality of the certificates was purely and extremely technical, and based upon the omission of the clerks of the courts that had granted them to make records of them in exact compliance with the requirements of the statutes, and although the holders of these certificates had committed no fraud in procuring them and were legally entitled to naturalization, and had held these certificates for ten years, and during all that time had voted at every election by virtue of them, believing that the certificates constituted them citizens; yet Davenport declared them to be void in the face of the decision of Judge Freedman, of that city, to whom the question of their validity, based upon the objection urged by Davenport, had been presented, and who decided "that the point in question was a technical error which no court would listen to with patience." On the very day that this decision was rendered Davenport telegraphed the supervisors and marshals in each district to pay no attention to it, and it was utterly disregarded by them. Afterward the same question was presented to Judge Blatchford, of the United States district court, and he, in an able and elaborate opinion, held the certificates to be valid.

One of the persons who was arrested by Davenport on the charge of attempting to vote by virtue of one of these certificates was Mr. Denning, who testified before the committee that he then was and had been for ten years past the superintendent of the store of A. T. Stewart & Co. of that city, and had under his control as such superintendent from five hundred to one thousand clerks; that he had come to America in 1860, and had been naturalized in that city in 1868, and after that time had regularly voted at elections until 1878, when he was prevented from voting by Davenport, upon which subject he testified as follows:

Question. After you were naturalized, did you vote?

Answer. Yes, sir; right straight along.

Q. Until 1878?

A. Yes, sir; until that time.

Q. Tell the committee what happened when you went to register.

A. I registered in the same house that I always did, in Fourth avenue near Tenth; I had been registered there all along. I have lived in No. 84 East Ninth street between six and seven years. The last week of October, I think about the 25th, I went to this same place that I had always been registered and offered my name and address, &c., which was taken. As I was on the point of leaving the gentleman there said he would like to see my papers, and I gave them to him and waited for him to return them. He said he would not give them back. I told him at once, says I, "That is a little bit singular; won't you give me some receipt for it?" "No," says he, "I do not want to do anything whatever."

Q. On that occasion were you informed that your papers were illegal in any way?

A. No. I tried to find out as to that, but I did not get any positive information.

Q. What steps did you take after that to find out if there was anything the matter with the papers?

A. I referred the matter to the lawyer of the house of A. T. Stewart & Co., Mr. H. H. Rice. I requested him to get me a duplicate, telling him that if there was anything wrong about it I would like to know it; and I believe he wrote to Mr. O'Brien, the chief clerk of elections in the city of New York, in regard to it. Mr. Rice received an answer from him, stating that he had no doubt it would be all right, and at the same time I received the duplicate of my papers.

Q. On election day you went to vote?

A. I went to vote. I walked out of the store without any overcoat on, the polling-place being right next door. I went in and offered my vote. The gentleman there called to another person, who came up and told me that I was arrested.

Q. Did you have an opportunity to vote?

A. Oh, no. They would not let me vote. I had my ballot all ready, and presented it, but they would not allow it.

Q. Were you taken away?

A. Yes, sir; right off.

Q. Where?

A. First of all down to Clinton Place.

Q. From there where were you taken?

A. Down to the city hall.

Q. You mean the post-office building, do you not?

A. Yes, sir; the United States court-house and post-office building.

Q. Please state what took place when you came down here.

A. The place was all in confusion. There was an immense number of men around. There was no getting at anything or anybody. I was runnning around from one room to another, first one way and then another; up-stairs to the third floor, down to the second floor, up to the fourth floor, and in three or four places.

Q. Mr. Rice was present?

A. Yes, sir; he was present, and offered to bail me.

Q. You were taken before Commissioner Davenport?

A. Yes. Finally I was taken to one of the gentlemen.

Q. Which of the commissioners?

A. I think it was Commissioner Deuel.

Q. What took place before him?

A. He wanted me to give bond for my appearance, which I rather demurred to.

Q. Did Commissioner Deuel say anything to you as to whether you had voted or not?

A. He asked me whether I had voted.

Q. Was there anything said as to whether you would or would not vote?

A. That was afterward. Commissioner Davenport allowed me to go, with the understanding that I would not vote.

By the CHAIRMAN:

Q. Did you promise Mr. Davenport that you would not vote?

A. Yes, sir; that was the only way in which I was allowed to go.

The recital by Mr. Denning of the wrongs and outrages committed upon him for daring to exercise his highest privilege and dearest right as a citizen could be repeated from the mouths of hundreds of men, equally respectable, who on that day for the same cause suffered like indignities from Davenport.

Why proscribe and disfranchise men of foreign birth for their political convictions? Why this fierce and relentless war upon them? Is the spirit of the old know-nothing party, that sleeps in a dishonored grave, to be invoked, and the cruel and merciless persecutions that signalized its career and destroyed its existence to be revived?

Sir, it is by reason of the manner in which this law has been and will be enforced in New York, Philadelphia, and elsewhere; the character of the men that have been and will be appointed to execute it; the partisan purposes for which it has been and will be used, and the gross wrongs that have been and will be inflicted upon citizens by its enforcement, that the democratic party demands its repeal or modification, and for doing so we are denounced as revolutionists.

Mr. Chairman, the gentlemen on the other side of this Chamber who participated in this debate have carefully and adroitly avoided discussing the merits of this bill and consumed their time in bitter and vehement abuse of the democratic party, and especially those members of the party who reside in the Southern States, and whose Representatives upon this floor have displayed such marvelous patience and commendable judgment in refraining to respond to the many insulting and offensive expressions that have been used to annoy and irritate them. Why these assaults upon the southern democracy? The demand for the repeal of this law does not emanate from the South; for it the sword and the bayonet are held in reserve; it comes from the North, whose cities have been infested by the presence of these deputy marshals, who have insulted, abused, arrested, and imprisoned citizens without cause and without process for daring to exercise their rights as legal voters. There are sixty-nine cities in the United States containing a population of upward of twenty thousand inhabitants, in which cities only can deputy marshals be appointed. Fifty-five of these cities are in Northern States and fourteen in Southern States, so that it is the North and not the South that is mainly affected by this law.

Sir, this law cannot be defended; nor can the people be longer deceived as to its partisan and dangerous character by the false issues that our republican friends seek to raise. The notes of alarm that are sounded from the bugle of the republican party have become familiar to the people, who realize the fact that those doleful wails do not mean that the country is in danger, but do indicate that the success of the republican party is imperiled. They are the agonizing cries of an expiring party. The war ended nearly fifteen years ago. Then the roar of the cannon ceased, the sword was returned to its scabbard, and the din of contending arms was silenced; the battle-flags were furled, the armies disbanded, and the soldiers that filled their ranks dispersed and returned to their homes to enjoy the society of their loved ones and resume the peaceful avocations of life. Since then profound peace and tranquillity has existed all over this broad land, and the passions engendered and excited by war have subsided. The South has accepted in good faith the results of the war and the issues that were determined by the war. It has renounced the doctrine of secession, repudiated its war debt, and recognized the validity of the amendments to the Constitution. It has resumed its place in the Union, and every State is represented in both branches of Congress by distinguished gentlemen, who, by the purity of their lives and intellectual attainments, command the respect of the country, and they, speaking the voice of the South, have given the most acceptable and conclusive proof of sincere loyalty to the Government and devotion to the Constitution. They united with the democratic Representatives from the North in driving from this Chamber the professional lobbyists who flourished here during the reign of the republican party and successfully plied their occupation in corrupting legislation by debauching legislators. Since the "confederate brigadiers," as they are called by the republican party, appeared upon this floor, no subsidies have been granted, no jobs tolerated, or questionable measures advocated. They have voted bounties and pensions to the soldiers of the Union, and spurn with just indignation the false charge that they seek or desire compensation for losses incurred by the South during the war; and as proof of their sincerity they voted in favor of an amendment to this bill, to

divest Congress of all power to allow any claims growing out of or in any manner connected with the war, and to vest that power solely in the Court of Claims, which is presided over by republican judges only, and who hold their positions during life, thereby destroying all hope, if any ever existed, of the allowance of such claims, which amendment was opposed by the representatives of the republican party upon this floor, who solidly voted against it, knowing that its adoption would put an end to the campaign cry that the country is to be bankrupted by the payment of these claims; they knew that it would silence that cry and dampen the political ammunition that constituted their "stock in trade" during the last political campaign, and which was thundered forth from every political rostrum of that party in the country, and which they desire to bring into requisition again. "O Consistency, thou art a jewel!"

These "confederate brigadiers" have reduced public expenditures, and earnestly favor the reduction of taxation, and have zealously united with the northern democrats in favor of the free and unlimited coinage of silver, the withdrawal of national-bank notes, and the substitution of Treasury notes or greenbacks in lieu of them, an increase of the currency of the country, and other measures for the relief of the people. These are their offenses, and not that they participated in the rebellion, for that offense has been condoned by the republican party, as shown by the fact that "confederate brigadiers" enjoy the confidence of that party and hold responsible positions under the present Administration, one of whom is now a member of President Hayes's Cabinet. The standard by which loyalty is tested by them is fidelity to the republican party, and not devotion to the country.

Sir, the so-called revolutionary struggle in which the democratic party is engaged commenced in 1874, when we swept the country by the advocacy of the doctrines that we now seek to formulate into legislation. Those doctrines then met, as they will again meet whenever an issue is tendered, with the approval and indorsement of the people who then gave us the control of this House, and which we have ever since retained, and will continue to retain as long as we remain, as we have in the past, true and faithful to the welfare and interests of the people whose confidence we enjoy. Since 1874, so well satisfied have the people been with our administration that they have placed the Senate under our control, so that we now have the control of the entire legislative department of the Government. In 1876 we elected our candidates for President and Vice-President of the United States by a majority of more than a quarter of a million of votes, and yet by the action of corrupt returning boards and partisan judges they were deprived of the exalted positions conferred upon them by the American people. It has been truthfully asserted that revolutions never go backward, and the so-called revolution in which the democratic party is engaged will not prove an exception, as it involves the dearest hopes and most vital interests of the people for whose benefit it is prosecuted. The democratic party is the party of and for the people; it is a liberty-loving party, the inveterate foe of corruption and tyranny, and the ardent hater of military despotism. The importance of its success cannot be overestimated. It means that the bitter sectional animosities that once so sadly existed, and which, happily for the peace and prosperity of the country, have terminated, shall never again be lashed into fury by radical politicians to secure or perpetuate political power, but that this Union of States shall be more firmly and harmoniously cemented and bound together by indissoluble bonds of mutual interest and love. It means that the system of abuses and usurpations of power, extravagance, and frauds that brought disgrace and odium upon the country shall never be repeated. It means that public expenditures shall be reduced and the frightful taxation that now rests upon and oppresses the people shall be lessened, and the financial distress now prevailing, which, like a dark cloud, hangs over the people, filling their minds and hearts with gloom and despair, shall be dispelled. It means that in this great country of ours, that God has so lavishly blessed with all that is calculated to make the people prosperous, happy, and contented, there shall be no starvation, want, or distress. The success of the democratic party means all this, and its fruits will ripen and be gathered after the final battle of the "revolution" has been fought at the polls in 1880.

Supervisors and deputy marshals employed in 1876, with compensation.

States and districts.	Amount paid chief supervisors.	Number of supervisors.	Amount paid supervisors.	Number of deputy marshals.	Amount paid deputy marshals.	Total amount paid.
Alabama, northern				150		
Alabama, middle				244		
Alabama, southern	$2,208 38	19	$500 00	192	$2,530 00	$5,238 38
Arkansas, eastern				785		
Arkansas, western				214		
California	1,578 99	105	5,220 00	244	4,225 00	11,023 99
Delaware				135		
Florida, northern				745		
Georgia	567 50			207	1,410 00	1,977 50
Illinois, northern		188	5,640 00	115	1,105 00	6,745 00
Louisiana	4,463 33	270	4,115 00	840	5,705 00	14,283 33
Maryland	977 55	574	2,950 00	1,222	8,085 00	12,012 55
Massachusetts	253 20	66	660 00	147	1,170 00	2,083 20
Mississippi, northern	50 50			239		50 50
Mississippi, southern				9		
Missouri, eastern	187 40	152	1,330 00	1,032	16,385 00	17,902 40
Nevada				9		
New Jersey	3,771 19	85	3,420 00	249	5,085 00	12,276 19
New York, northern	7,723 70	339	9,975 00	342	7,925 00	25,623 70
New York, eastern	12,150 52	370	11,674 00	723	11,986 00	35,810 22
New York, southern	19,383 36	1,070	32,115 00	2,560	39,785 00	91,283 36
North Carolina, eastern	591 84			166		591 84
Oregon				13		
Pennsylvania, eastern, (Philadelphia)	3,449 40	1,368	27,360 00	347	3,500 00	34,309 40
Pennsylvania, western		224	2,240 00	49	490 00	2,730 00
South Carolina	879 14			338	395 00	1,274 14
Tennessee, western	129 00			30	150 00	279 00
Texas, eastern	249 92	33	1,800 00	18	900 00	2,949 92
Virginia, eastern	551 05		1,630 00	201	1,785 00	3,966 05
Virginia, western	206 00					206 00
West Virginia				4		
Idaho				4		
New Mexico				78		
Utah				18		
Total	59,371 67	4,863	110,629 00	11,610	112,616 00	282,616 67
Amount paid United States commissioners in New York City for services under election laws						3,304 60
Total expenditures reported for 1876						285,921 27

Supervisors and deputy marshals employed in 1878, with compensation.

Alabama, southern	$1,551 71		$1,000 00		$1,000 00	$3,551 71
Georgia				34	170 00	170 00
Illinois, northern		224	4,480 00	224	2,240 00	6,720 00
Kentucky	116 00		870 00		870 00	1,856 00
Louisiana	1,313 00	266	3,600 00	120	4,000 00	8,913 00
Maryland	351 03	230	2,950 00	700	4,445 00	7,746 03
Michigan, eastern		52	1,300 00		2,935 00	1,435 00
Massachusetts		282	8,460 00		135 00	11,395 00
New Jersey	7,324 84	148	3,050 00	192	2,880 00	13,254 84
New York, southern, (city)		1,225	30,000 00	1,350	27,000 00	57,000 00
New York, eastern	15,972 33	354	10,620 00	584	6,500 00	33,092 33

Supervisors and deputy marshals employed in 1878, *with compensation*—Continued.

States and districts.	Amount paid chief supervisors.	Number of supervisors.	Amount paid supervisors.	Number of deputy marshals.	Amount paid deputy marshals.	Total amount paid.
New York, northern	$7,558 80	374	$11,000 00	374	$7,000 00	$25,558 80
Ohio, southern	740 45	.....	890 00	71	447 78	2,078 23
Pennsylvania, eastern	5,830 00	1,370	27,440 00	750	7,550 00	40,820 00
Pennsylvania, western	.....	312	3,121 00	.....	.....	3,121 00
South Carolina	579 35	34	680 00	.....	700 00	1,975 35
Virginia, eastern	585 00	70	620 00	102	570 00	1,775 00
Total	41,922 51	4,881	110,081 00	4,735	68,442 78	220,446 29
Amount paid United States commissioner for services under election laws in New York city	.....	.....	.....	.....	.....	2,267 95
Total expenditures reported for 1878	.....	.....	.....	.....	.....	222,714 24

The Washington Post, in commenting upon these expenditures, says:

There is nothing on record throwing any light upon expenditures of this character prior to 1876, except the report of the Caulfield committee of the Forty-fourth Congress. That committee compiled a statement of expenditures from John I. Davenport, chief supervisor in New York, for the election of November 5, 1872, in that city. It was shown that the amount expended in New York City alone under the Federal election laws for that election was nearly $120,000, and this, very probably, is a fair illustration of the manner in which the public money was used all over the country to defeat Greeley and elect a republican Congress. A summary of the expenditures was as follows:

Amount paid deputy marshals on district rolls	$50,590 00
Amount paid deputy marshals on supplementary rolls	7,155 00
Amount paid supervisors of election on district rolls	23,885 00
Amount paid deputy marshals on headquarters roll	3,925 00
Total	85,555 00
To extraordinary expenses incurred in enforcing the acts of Congress in relation to elections at the election held in the city of New York on the 5th of November, 1872	33,434 36

This makes a total of $118,989.36 that was expended in that city at the one election, and the report contains the accounts, which show that the marshals of each assembly district expended a large proportion of the money for "carriage hire."

The "close" congressional districts were not only industriously worked for the republicans by deputy marshals, but Mr. George C. Gorham, as his testimony has shown, had a watchful eye upon them. He, as executive officer of the republican congressional committee, collected $106,000, of which $93,000 was squeezed out of the Department clerks in Washington. The United States marshals were in communication with Mr. Gorham, and during the canvass some of them came all the way to Washington to get directions as to how they should use their power for the "good of the party."

Mr. Gorham's testimony, and that of his assistants, before the Wallace committee, shows that the assessment plan was vigorously applied in every one of the Departments, and no person who drew money from the Government was overlooked. Solicitors were sent through each Department several times, and those employés who failed to pony up to them were subsequently reminded by circulars of the "debt of honor" they were expected to pay. The money was raised to be used i carrying the House for the republicans. This was openly announced.

Legislative, etc., appropriation bill.

SPEECH OF HON. D. M. HENRY,

OF MARYLAND,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 24, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. HENRY said:

Mr. CHAIRMAN: At an earlier stage of our proceedings I should have been glad to have addressed myself at some length to the discussion of those constitutional and legal questions which have been evolved in the progress of this debate. Such questions are in accord with my taste, but they have been already argued with such ability and power by those who are allied with me in political sentiment, that I am perfectly content to let the decision rest, both here and in the country, upon the arguments which they have made. I could not add to their force by anything that I might say, nor could I do justice to myself without a repetition which I prefer to avoid.

From the beginning I have not entertained a doubt that Congress has the constitutional right to repeal those portions of the law which it is proposed to repeal, and to repeal them in the mode contemplated in the pending bill. But before proceeding upon the line which I have marked out for myself, I shall briefly notice some things which have been said upon the other side.

The eloquent gentleman from New Jersey, [Mr. ROBESON,] who yesterday addressed the committee, entered upon a learned disquisition upon the powers of the Government in an effort to show that the laws which it is sought to repeal are constitutional. While I could but admire the ability and eloquence which he displayed, I confess that I could not discover in the point which he would establish more than a remote pertinency to the issues in controversy. If, for the sake of the argument, the correctness of his position were conceded, could it for one moment be contended that Congress has not the right to repeal a constitutional law? The unconstitutionality of any law is one of the strongest reasons for its repeal; but that it is constitutional is no argument at all against the right to repeal. The real question is whether the pending bill is constitutional with the repealing clauses in it. In regard to this there seems to be now little or no controversy, and it is generally admitted that Congress has an undoubted right to pass it. All legislative powers are, by the Constitution, expressly vested in Congress, and each House is expressly authorized to determine the rules of its proceedings. This House having by virtue of this power established its rules, must necessarily have the exclusive right to interpret and administer them; and when in conformity with these rules, as construed by the House itself, it proceeds to pass any law, no other department of the Government has the right to object to, or question the correctness of its decision. Its independence rests upon the maintenance of its right under the Constitution to regulate its methods of legislation, and the free exercise of this right in any particular case cannot of itself afford any reason, or even pretext for the exercise by the Executive of the veto power.

As a general practice, it is undoubtedly inexpedient to tack on to appropriation bills a variety of amendments, or legislation not in substantial harmony with the nature of such bills. But, after all, human government must be administered by human agents, and the theory of ours is that the people and their representatives are to be trusted. Reliance must be placed in their wisdom and their patriotism, that they will not resort to improper modes in exercising their constitutional powers. There need be no serious apprehension of indiscreet or unwise legislation if the people be vigilant in the choice of their representatives. But there are emergencies when it is not only expedient, but it is right and a bounden duty, that we should resort to that method which will be most speedy and effectual in accomplishing what is required by the interests of the country and the very principles which form the foundation of our Government.

But I do not propose, just yet, to enter upon the discussion of the merits of this bill. Before I do so, I must say a few words more in reference to certain matters which have been introduced by gentlemen on the other side.

I had hoped, Mr. Chairman, that there were memories of past differences which might never again be awakened, and that the promise and the hope of many years ago, that when emancipation came the subject of negro slavery would be banished from these Halls, would be literally fulfilled. These aspirations have been doomed to disappointment. For partisan purposes, the agitation of that subject has been kept up and seems now animated with renewed vigor and likely to go on to the injury of all races and of every interest until an indignant people demand that it shall cease.

The distinguished gentleman from Maine, [Mr. FRYE,] by way of episode in this debate, endeavored to rouse our feelings by a dramatic recital of the old threadbare story of the adventures of Anthony Burns, and led us upon a free excursion through the dreary regions of modern philanthropy. And after him, the no less distinguished gentleman from Connecticut thought it worth while to entertain us with a narrative in which he appeared as an actor, and wherein he recounted how he had once been the purchaser of the title to a Doctor of Divinity.

I listened with the expectation of hearing that he was justly entitled to credit for some noble deed of charity, and was not a little surprised when I learned the fact that the freedom of this historic divine was after all the gift of his owner for the nominal consideration of "one dollar and, above all, of the indefeasible right of all men to be free;" and I was disappointed when this House was left to determine only by conjecture who paid the expenses of the negotiation. As an offset to this I may be excused for stating that I knew, in my own town, a colored man who did not study effects and who was not a Doctor of Divinity, but who preached the Gospel in an hum-

ble way, to the best of his ability and in all sincerity. He was a slave, yet scarcely more than nominally so, for his indulgent owner allowed him to do much as he pleased; but, in the course of time, some thirty years ago, he thought that he would like to be free, and he also thought that it would only be necessary to apply to the liberality of his abolition friends, in order to obtain without difficulty the moderate sum for which his freedom could be secured. Accordingly he wended his way to the "land of steady habits;" but, instead of money, they gave him advice. They advised him to run away and gain his freedom without cost. This he did not do; preferring an honest, straightforward course, he returned home a poorer and a wiser man.

It is time that this raking up of incidents in the history of an extinct institution, for purposes of reproach and crimination, should cease. It is not the part of prudence to assume an air of sinlessness and commence the throwing of stones. If we can go back twenty or thirty years to find this pabulum for moral railing, why may we not extend our retrospect to a century or more? Why may we not ask who brought, or helped to bring, the African to these shores through all the horrors of the middle passage, and delivered him as a slave from the auction-block for gold? And why might we not call attention to those memorable words of the Great Redeemer of the world when he stood before Pilate's judgment-seat, "He that delivered me unto thee hath the greater sin?"

Mr. Chairman, let us dismiss the dead past. We have to deal with the present and the future of the negro race in its new relations to the white population of this country. On the other side, the burden of the argument has been that the continuance of the laws which we seek to repeal is necessary to the welfare and security of the freedmen. I propose to consider the force of this argument, for I regard the destiny of that race (and I speak as their friend) as one of the most profound and difficult problems ever submitted to the judgment and solution of a Christian people; and in connection with it, we shall have need of all the patience, the forbearance, and the statesmanship we can command. Having for many years had personal knowledge of the relations which subsist between the races in the State in which I live, I may be permitted, indeed it may be my duty, to express my views upon the subject, as far as I can, in the brief time allowed me. It is said upon the other side that it is the duty of the National Government to protect all its citizens at home and abroad, and it has been especially insisted that these laws are absolutely necessary for the protection of our colored citizens in their rights. At the same time it is contended that the maintenance and enforcement of these laws at home is due to such citizens, inasmuch as the whole power of the Government is used for the protection of our white citizens abroad. I shall endeavor, in the first place, to show that not only are these laws unnecessary for the protection of the freedman, but that they militate against his interests; and in the second place to show, that of late years, on account of the incessant interference with the affairs of the States, which are fully competent to attend to them themselves, the attention and resources of the National Government have been so absorbed that its bounden duty to protect its citizens abroad has been almost totally neglected.

Mr. Chairman, I represent a district in which there are over nine thousand colored voters, and I know what the relations between the two races are there. I know that in this district for some years past there has been no Federal interference; and I speak from my personal knowledge when I state, that in the very precinct in which I vote, where there are over a thousand voters, about three-sevenths of those voters are colored freedmen. There has been no Federal interference there for a number of years. Frequently present at the polls, and on one or too occasions myself a candidate, I have had ample opportunity to witness what occurred there. On more occasions than one I have seen venerable and respected white citizens of our community stand and wait for half an hour or more in order that the ranks of colored voters, usually first at the polls, might go up and deposit their ballots in the same box in which the white men deposited theirs. I myself have waited patiently in the same way; and in all these years not only have I never seen an assault committed upon a colored man, but I have not heard an angry or unkind word pass between the two races. Not only have I seen no effort to intimidate the colored voter, but everything has been done good-humoredly; although the result in my own county and in my own town depended in a great measure on the votes of the colored man, there was never any impediment or obstruction in his way to the polls. He has gone up with the same liberty as the white citizen. Indeed, he has practically had the preference, because he is fond of exercising his new privilege of voting; and the momentum with which he started on his career of citizenship seems still to hurry him irresistibly to the polls. They always turn out; they never fail to appear on election day; and there never has been any attempt to intimidate them, much less has there been any violence practiced upon them. What I say of my own knowledge with regard to the precinct in which I vote is true, I believe, of the whole district which I represent.

I have never heard, from one extremity of it to the other, of any assaults anywhere having been committed upon colored voters. They have had no difficulty in voting, although it is a democratic district and some of the counties are extremely close, some of them indeed occasionally going republican. There never has been to my knowledge, and if there had been I should almost certainly have heard of it, a single instance in which a colored man was ever deprived of his vote or the right of registration by fraud or violence—never a single instance in which he did not march up to the polls in the full enjoyment of all his rights and deposit his ballot. Such are the results of the non-interference of the Federal Government in our elections. I am proud of the constituency whom I represent, and know them to be law-abiding and intelligent, but I should not be justified in asserting, or insinuating that other members upon this floor have not constituents of whom, for the same qualities, they may be justly proud; and when I look around upon the cultured and kind-hearted gentlemen who represent those States in which slavery once existed and freedmen are now most numerous, I feel perfectly confident that they, if let alone, would mete out to the colored man the same privileges and the same rights which are so freely and ungrudgingly accorded to him in my own State.

I am disposed always to doubt these stories of outrages which are given to us as rumor, or as so called history. What is rumor but falsehood? What are these reports based upon? Upon mendacity and perjury in a great measure. And when I see one like the gentleman from Louisiana who sits before me [Mr. ROBERTSON] rise here and make such statements as he made a few moments ago, and when I hear other gentlemen upon this floor make similar statements, I willingly accept them as the real truth. Why, if one-tenth part of all these alleged enormities have occurred, cannot some gentleman be found to stand up and say of his own knowledge that he knows of their occurrence? Why is there not some one who can show that these States are unwilling to accord to the colored citizen his equal rights, instead of referring to this so-called history which has little or no truth in its statements. The gentleman from East Tennessee, [Mr. HOUK,] who spoke the other day and who, I thought, might have some revelations to make upon this subject, as he comes from a district in which they are very likely to occur, not only could not tell us, of his own knowledge, of any wrongs inflicted upon the negroes, or of any interference with their rights of suffrage, but expressly stated that there was no need whatever of Federal interference in the affairs of his district. "Not a bit of it." Everybody there could vote as he pleased. And yet this gentleman, after the fashion of the hour, quickly repeated the stereotyped charges contained in the partisan chronicles of the times; but, as is almost invariably the case, located the scene of his tragedies of horror in another State, some hundreds of miles away.

If you should ask gentlemen upon this floor whether they desire these United States officers, or the military at their polls, they would say, probably without exception, that in their districts they have no use for them. I have no doubt that these alleged enormities have been grossly, and for political effect intentionally exaggerated, and that if they were sifted to the bottom they would be found to have little basis in truth. It is always easy to find a pretext for pragmatic intervention in the Southern States, but when begun, it never fails to take direction in favor of a particular class, and in the interest of the republican party. It is this intermeddling by the Federal authority with the internal affairs of the States that has provoked disturbances and in a great degree destroyed the business of the country. We hear much talk of overproduction; but this needless and incessant interference is one of the principal causes of the present long-protracted depression. It has ruined the market of the South, more important in the days of its prosperity, to the North, than that of all her colonies to Great Britain. How is it possible for the States referred to to regain their prosperity, when having passed through great tribulations, the bereavements and the desolation of a gigantic war, their property-holders and men of intelligence are living in constant apprehension of being driven from the control of their own State governments? And with their spirits depressed, themselves impoverished and overwhelmed with anxieties, how can it be expected that they will submit cheerfully and uncomplainingly to every attempted invasion of their remaining rights? Under such circumstances those whose all depends upon good government will, as they are human, at times inevitably become irritated, and it is excusable, it is justifiable, that they should at least resort to all lawful means to maintain their ascendency and vindicate their rights; nor is it to be wondered at, if they should have been provoked occasionally to go beyond the methods of the law when they believed their property to be in danger of confiscation by reckless taxation, and that the most ignorant, irresponsible elements were about to get complete control of the governments of their States only that they might despoil them, under the forms of law, for the purpose of enriching themselves and their corrupt and plundering drivers.

Now, Mr. Chairman, in my own State, as I have said, not only do the most kindly relations prevail between the two races wherever there has been no recent Federal interference; not only does the colored race enjoy all the rights of franchise without abatement or obstruction, but throughout the State ample provision has been made for the education of the freedmen at the public expense. This provision was made, too, by a democratic Legislature. It was my fortune to be a member of one branch of it at the time, and I most cheerfully voted for the appropriations made for the purpose of establishing schools for them. These schools are still maintained by State and county taxation, and increase in efficiency from day to day, so that the education and elevation of this race now depend entirely upon themselves.

What has come to pass in my own State, I confidently believe will

follow in all other States as soon as circumstances will permit, if they are let alone and allowed to control their own destinies. But there can be no doubt that as long as the freedmen labor under the delusion with which most of them have been possessed, that they are, at some time not very remote, to become prosperous and wealthy and wise through the direct assistance and bounty of this Government, or by the special interposition of Divine Providence, as the reward of their imagined merits and trials, they will not be disposed to do much for themselves. The sooner they understand and realize that they are not to be the perpetual wards of the nation, the sooner will they begin to be men. It is time now, in their interest and for their good, and for the good of all, to put them upon their manhood.

And, after all, what extraordinary sufferings beyond those of other races have they endured, that there should be upon them no obligation to be up and doing? No race of any color that ever trod the earth—certainly not the race to which most of us belong—ever attained so great privileges as they have attained, after so short a tuition and so mild a discipline. We may go back to the remotest time, and we will find no people that have ever played any part in history, no people that have ever borne forward the banner of civilization or accomplished anything for the glory and honor of mankind, who were not compelled to submit to longer and severer trials than they. Even the chosen people of God endured hard slavery four hundred and fifty years in the land of the Pharaohs. They then traveled forty years in the wilderness until all the males of the generation which started for the promised land, with two exceptions, were laid in their graves; and when they reached that land, they were obliged to drive out and exterminate the ferocious, warlike tribes who inhabited it before they could enter upon its possession. It has been much the same with every other race. Look at the Anglo-Saxons. Did they inherit as a Heaven-bestowed gift the freedom which they enjoy? No; but through toil and hunger and thirst, through bloodshed and battle, they have gradually worked themselves up in the course of the centuries to the grand position they now occupy at the head of the civilized world.

It is a mistake—nay, it is inhumanity—to longer persuade these people that they have been the greatest sufferers throughout the ages. Look back at their ancestors in Africa. Look at their kindred there now. The most brutal and degraded savages on earth—a people that never have appeared in history during the thousands of years of their residence in one of the most inviting quarters of the globe. Their descendants in this country, after their training of some two hundred years, have received as a free gift the grandest civil privileges ever conferred upon mortal men—the full and complete rights of American citizenship. They are at least equal to the white man in the eye of the law; and it is for them to elevate themselves, if they can, to the stature of his noble manhood. They have no reason for repining or regret for the past. They should rather take courage and feel a pride in the remembrance of their achievements. No laboring people in the world by their daily toil have contributed more to the comfort and happiness of mankind than they, during the years of their bondage. The successful and abundant production of cotton, sugar, rice, coffee, and tobacco has caused a great and beneficent change in the dress, diet, health, and even manners and customs of the human race, and added immensely to the wealth of the world. And they themselves have been taught habits of industry, the arts, and duties of civilized life, so essential to success; some of them have obtained, to a greater or less degree, that education which is derived from books, and all have been brought to the knowledge and worship of the living God, which all the missionaries of Christendom have been unable to teach their kindred in their native land.

Mr. Chairman, to my mind it is clear that the hour has arrived when every consideration of justice and expediency requires that this useless, irritating, and injurious meddling should cease. Wherever it has been discontinued quiet and harmony prevail, all rights are enjoyed, and the signs of returning prosperity are beginning to appear. When the business of the country has been prostrate and languishing for years, and now demands all our attention and our best efforts to revive and re-energize it, it becomes an imperative duty that we should earnestly try to devise some means whereby we may regain our lost prosperity—whereby something of good may be accomplished for our own race—for the benefit of all our citizens.

Toward the colored race I have the most friendly feelings. From my childhood I have lived among them. I know their good qualities, which are many, and I know as well their weaknesses. No effort shall be wanting on my part to elevate and enlighten them, to bring them up to whatever plane their capabilities will enable them to reach. I will never willingly put any obstruction in their way; on the contrary, whatever I can do in my limited sphere to help them on I will most cheerfully do. There is unquestionably a strong and growing opinion throughout the country that they should not wait longer for the beneficence of the Government to crown them with wealth and honor, that they should no longer expect so much from the providence of God. Standing before the law upon the same platform as the white man, clothed in all the panoply of American citizenship, they should be told in all candor, with all honesty, and in the spirit of benevolence that they have fair play in an open field, and must now take care of their own destinies, as others before them have done.

If through the past we regard the habits, the manners, and the inborn spirit of the Anglo-Saxon race, we may be sure that in the future they intend to continue marching on. For some years they have been pressed to the earth and overwhelmed by calamities of which the administration of this Government has been a principal source; but they have about reached the conclusion that they have halted long enough, and when they start again with firm tread on their grand advance, we may feel assured that while they will bid the laggard come on, while they will lend him a helping hand and invite him to go with them, they certainly will not halt again and open ranks, that the freedmen may pass through and take the lead. They allow not the obstacles of nature to change their purpose or obstruct their course, and any race which stands athwart their path will inevitably be trodden down and left in the dust of desolation behind.

The life of the individual man, so far as this world is concerned, is the beginning and the end of him, unless he be one of the immortals who "were not born to die." Human law cannot make him greater than himself. Not so with races; they have the ages before them. All they can ask is opportunity, and that rarely comes of itself. If the colored man can command the patience, as I trust he can, of the powerful and mighty, he will have accorded to him a greater boon than ever fell to the lot of any branch of the great Caucasian race. What his future and his fate are to be in this country God knows, I do not. I shall hope and labor for the best in spite of misgivings and doubts. The question is one which this generation cannot settle, but which must be left to posterity, with better lights before them, to decide. Exceptions and exotics afford no basis for sound judgment; in his present contact and surroundings, with the privileges which he enjoys, we have no facts to which we can rationally apply the principles of induction. The mysterious migration now going on in due time will shed some light, which may enable all to see clearly the path of duty, which at present is unfortunately involved in obscurity and darkness.

But, Mr. Chairman, time will not permit me to dwell longer upon this important and unexhausted subject. I must proceed to my second point and controvert the assertion so frequently made upon the other side, that this Government protects its citizens abroad. And I shall endeavor to show that, under republican rule, the constant absorption of the attention and powers of the Government in tinkering upon those domestic affairs which fall more properly under the jurisdiction and control of the States, has resulted in an almost total neglect of its duties in this direction. No people on the face of the globe have done so much to establish the freedom of the seas as the people of this land. When we were but a feeble nation, not one-tenth part as great as now, we sent our Preble, our Bainbridge, our Decatur, and our Eaton to the Mediterranean and its border, in order that we might liberate white men who were held in torturing slavery by the Barbary powers, and rid that European sea from the ravages of their corsairs. With the assistance of some of the European powers, we succeeded in making that a safe and open sea, besides raising to a lofty height the fame of our enterprise and valor. In later days, when our neutral rights were invaded and American sailors were impressed, we went to war, being still comparatively weak, with the greatest of the maritime powers, and by our achievements we added to the common law of nations those liberal principles which no nation since that time has ever dared to controvert. So that the American flag, wherever it floats, is a sure protection to any man who stands beneath its folds upon an American ship. We have been subjected to no impressment since.

In passing, I may recall the belief, or superstition if you please, of ancient times, that the words of dying heroes were prophetic, or pregnant with mysterious wisdom; and when I think over the past and the present, when I look upon the ocean which the valor of our sailors made free, and see that now we have scarcely a ship afloat upon it, that our great commercial rivals are monopolizing our trade and carrying our own products, I think of the words of the dying Lawrence, and as I think of them I instinctively give to them their broadest scope, their deepest significance as pointing to our duty now. "Don't give up the ship!" Alas, we have given it up! We have not time to think of reviving our shipping interests; we have not time to think of restoring our foreign commerce; our resources and our energies have been absorbed in ignoble and partisan interference in the domestic affairs of the States, in causing perturbation and excitement there instead of having them devoted to the restoration and maintenance of those great agencies of wealth and power.

Mr. WHITE. May I ask the gentleman a question?

Mr. HENRY. Certainly.

Mr. WHITE. The gentleman is indicting somebody for not paying attention to our material interests in legislation. Now, may I ask, who brought about this extra session? Who brought about this great debate on questions relating to the States? Certainly it——

Mr. HENRY. I should yield with a great deal of pleasure if the gentleman's question were relevant. I will, however, extemporize an answer to so much of it as I heard. I would say that the United States Senate was responsible for it. [Laughter and applause.]

But I will proceed. If we follow on a little further we shall be reminded how, not very long ago, under a democratic administration, almost in the sight of Europe, the gallant commander of an American ship, the citizen of a State which of late years has been the victim of great afflictions, was willing to go down with his ship, sooner than permit even an inchoate citizen of the United States

to have a hair of his head injured by a foreign power; and how a Secretary of State who was every inch a man, whose mind was equipped with ready learning, and whose heart was aglow with genuine patriotism, pushed the law to its utmost verge to vindicate before the world the right of Martin Kozta to the protection of this Government.

But things have changed. The American citizen does not receive such protection now. We have little or no shipping engaged in foreign commerce. We permit our merchants and our manufacturers to travel over the globe more like commercial mendicants, or lonely peddlers, than as citizens of a mighty Republic able and ready to defend them. I have heard described, and I can well realize, the feeling which the traveler has, far away from his native land, when he sees the flag of his country floating at the mast-head of a ship-of-war, and looks upon her broad-mouthed guns and noble crew—how though a stranger, "amid the hum, the crowd, the shock of men," he feels that he is safe—that he is at home. But this feeling has been rarely enjoyed in recent times. Supervisors of elections, marshals, deputy marshals, and military to watch and harass the voter in the exercise of his sovereign right at the polls, have been and still are the order of the day. The means have been expended in paying them, which might have been used in building cruisers to give us consideration and influence abroad and enable our merchants to compete successfully with their commercial rivals in the markets of the world. The historic facts to which I have referred are sufficient to show the policy and the practice of the Government under a different *régime*. The contrast since has become very striking, as reference to a few recent occurrences will illustrate. Only a short time ago, almost within sight of our own shores, in the affair of the Virginius, American citizens, by the score, were butchered in cold blood, and so near us that we could almost hear the rattle of the deadly musketry and the dying groans of the victims. Our flag was not there to protect them; it remained for a gallant Englishman, with no orders but the instincts of humanity, to fly to the rescue and save the remnant of our doomed citizens. When too late to save them, our Government intervened with the pen and ink of modern diplomacy, and with accurate calculation set the price upon the blood of our butchered countrymen, and made the government of their murderers pay us a commutation in money. Thus was civilization carried back a thousand years, to the time when a man might commit any crime if he was only prepared to pay the sum for which it could be commuted.

Again, it has hardly been a month, it was but a few weeks ago, that we heard an agonizing cry from our own forlorn and hyperborean Territory of Alaska, where some of our people, engaged upon our own soil in a lawful and commendable business enterprise, were hourly expecting extermination by the yelling savages who surrounded them; but we had no military or naval force within reach for their protection, and appeal was made to Her Britannic Majesty's ship Osprey, to come and save them from their impending doom.

Even within the last year, when the subject was agitated of enlarging our commercial relations with the neighboring Republic of Mexico, our minister to that country, in a carefully prepared and well-considered letter, discouraged such attempt, although the field appeared so inviting, among other reasons, upon the ground that our citizens who have been residing and engaged in business there have been plundered, robbed, and murdered, time and again, and that there was no security for their property or persons in that country, and no punishment for those who wronged or injured them. I refer not to those border troubles which might perhaps be regarded as incident to the situation, but to well-authenticated instances of outrage in the interior of that ill-governed land which have scarcely, if at all, attracted the attention of our Government.

These incidents which I have recalled from our recent history, and which might be multiplied, are sufficient to show, to our humiliation, how this Government, as lately administered, has neglected its traditional and imperative duty to protect its citizens when away from home, and to suggest the pressing necessity in this respect for a different policy.

I know it was the teaching, in our infancy, of the Father of his Country that we should avoid entangling alliances with other nations. That advice was sensible then, and the practice thus indicated is sensible now. But we are old enough, and wealthy enough, and strong enough, to adopt an independent foreign policy, peaceful in its nature, not for war or conquest. Regard for the public welfare demands that we should no longer occlude ourselves within our own limits and waste our energies in ruinous contention over questions of local and internal polity which the people who are directly interested could soon settle wisely and well. We might draw encouragement from the fact that not a great while ago we equipped a little fleet and succeeded in unbarring the gates of the populous empire of Japan, which had been closed for centuries against outside nations; although by bad management since, and in spite of our proximity, we have permitted our great rivals to engross its trade in great measure, and reap the advantage of this promising achievement.

But, Mr. Chairman, I cannot pursue this subject further now; on some more suitable occasion I may revert to it. I must say something in regard to the laws which are to be affected by the repealing clauses of the pending bills.

And first, I call attention to the test oath prescribed for jurors by section 821 of the Revised Statutes. That section is as follows:

At every term of any court of the United States the district attorney, or other person acting on behalf of the United States in said court, may move, and the court, in their discretion, may require the clerk to tender to every person summoned to serve as a grand or petit juror, or venireman or talesman, in said court, the following oath or affirmation, viz: "You do solemnly swear (or affirm) that you will support the Constitution of the United States of America; that you have not, without duress and constraint, taken up arms or joined any insurrection or rebellion against the United States; that you have not adhered to any insurrection or rebellion, giving it aid and comfort; that you have not, directly or indirectly, given any assistance in money, or any other thing, to any person or persons whom you knew, or had good ground to believe, to have joined, or to be about to join, said insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; and that you have not counseled or advised any person to join any insurrection or rebellion against, or to resist with force of arms, the laws of the United States." Any person declining to take said oath shall be discharged by the court from serving on the grand or petit jury, or venire, to which he may have been summoned.

That section was adopted in June, 1862, after a large majority of the white population in some of the States, and nearly the whole of that population in others, had committed acts which would make it impossible for men of character to take the oath which it prescribes. Whatever might have been said in its justification as a war measure, it cannot possibly be defended now after years of peace, upon any ground, consistently with a proper respect for the impartial administration of justice, or the fundamental right of every man to trial by a jury of his *peers*. In trials, most especially for alleged political offenses, there could be little hope of fairness in the face of such an oath. Besides, it is *ex post facto* in its nature, in punishing whenever the occasion occurs, those who cannot take it, with deprivation of the privilege of sitting on juries, for acts which were committed before the law was passed which prescribes it, and it practically makes an odious discrimination in favor of the colored man and against the white. Its repeal is demanded by every principle of justice and expediency.

I come next to the consideration of the law relating "to the elective franchise." This law consists of thirty sections, and of these but fourteen are repealed or in any way modified or affected by the bill under consideration. Then follows the law relating to "crimes against the elective franchise and civil rights of citizens," consisting of twenty-seven sections, of which but one is repealed entirely and one modified in part by the bills referred to. Then comes the law under the title "insurrection," of which one section relates to this subject, and this is not embraced in the repealing clauses of said bills. So that we have forty-two sections of the law, as embodied in the Revised Statutes, to be left in full force for the protection of every right connected with the elective franchise which any citizen could justly claim.

There can be no doubt that Congress has the constitutional right to pass laws regulating the times, places, and manner of holding elections for Senators and Representatives. The extent to which it may go has not yet been exactly defined, nor shall I now engage in any presumptuous effort to that end. But in time of profound peace, when no motive or emergency exists of greater moment than mere considerations of party ascendency, it is inexcusable that we should depart from the policy and practice of non-interference in elections so scrupulously adhered to in ante-bellum times. The sections of the law which there is no attempt or disposition to interfere with or repeal are ample under all probable circumstances to guard in perfect safety the rights of franchise in every State, and heavy is the responsibility of invoking them in the interests of party, when no extraordinary emergency exists and the States and the people are willing and ready to protect the freedom of elections if left to their control. The acumen and ingenuity of the ablest lawyers seem to have been exhausted in devising the provisions of these sections. There is no conceivable offense against, or interference with the elective franchise, whether by the individual, by combinations of individuals, or by officers of the law under color of law, which is not made punishable through the courts. And in cases of insurrection and the like, section 5299 provides the ultimate remedy of Federal intervention. What more could be asked by any citizen, white or black?

I have already stated that before the law the colored man is at least the equal of the white man. It is by no means certain, that in some respects, the former has not been made superior.

Section 5507 of the Revised Statutes is in the following words:

Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage, to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section.

This section, taken in connection with the fifteenth amendment, would seem to be intended for the exclusive benefit of the colored voter. At all events it admits of a construction which gives it the effect of which I have spoken.

It is now proposed in a legitimate way, by modification and repeal of certain portions of the law, to limit the powers of the supervisors of elections, to dispense with the presence of United States marshals and deputy marshals around the ballot-box, and to prevent the interference of the military with the freedom of elections. The necessity for such legislation is demonstrated by experience and manifested by popular complaint and discontent. I cannot enter into details as to the practical operation of these laws, and I need not, for gentlemen who have preceded me have already said enough on that subject. But I may discuss briefly their tendency, and the danger which is incident to their longer continuance.

Every one who has been connected with public affairs, or an atten-

tive observer of the phenomena of party contests, knows that in the progress of every political campaign, no matter how dry and uninteresting the issues, men, especially young men and candidates, become excited, until they believe or pretend to believe that a terrible crisis is at hand and the safety of the country depends upon the success of their party or themselves. In such a situation, whenever it may occur, we will behold a base and whimpering crowd rushing to this capital from localities near and remote, and with pitiful tales and malignant falsehood invoking from a sympathizing Executive the aid of the Federal power to enable them to thwart the popular sentiment against them. And it will happen, that just upon the eve of the election the supervisor, the marshal, the deputy marshal, and the soldier will appear, and by ingenious and alarming orders and proclamations, probably without the slightest resort to actual violence or force, will so coerce the citizen that some through disgust, some through the fear of arrest or other harm, will keep away from the polls, and others more ignorant will break their party allegiance, influenced by the impressive display of Federal power. Thus will political victory, organized by the intelligence and virtue of those most interested in the result and achieved by lawful and honorable means, be ruthlessly changed to disappointment and defeat. Of such proceedings ill-feeling, bitterness, enmities, and disorder are the inevitable result.

It is the theory of some, that the people of the States, of others, that the people of the United States, but of all, that the people are the sovereigns of this land. Those who administer its government from time to time are not their masters, but their servants, and responsible to them. They have the unquestioned right to change those servants after longer or shorter terms, however high, or however humble the positions which they hold. But if a President is to have the means of controlling the local elections throughout the States, why can he not use them to perpetuate his own power and make himself a king or emperor?

The States will be able in the future, as they have been in the past, to regulate their own elections and to see that they are peaceably and fairly conducted. But if riot or disorder should now and then occur, better that than arbitrary power. Not only is it their interest as well as duty to require peace and fairness at the polls, but if any member of either House of Congress should be elected by fraud, or violence, or other unlawful means, the decision is not final, each House having authority to judge of the election and qualifications of its members. It is much safer for the country to leave rare and widely separated instances of unfairness, or even of violence, possible, than to keep the result in all cases under the absolute control of a single man. Such control in its every aspect is undemocratic, unrepublican, (I speak not in a party sense;) it is un-English and un-American.

Mr. Chairman, a thousand years ago the great Alfred, wiser than Lycurgus, wiser than Solon, wiser than all the lawgivers who had lived before him, in a dark and lawless age recognized and placed upon a firm foundation that system of local self-government which has survived the fall of dynasties and empires and come down through the centuries as the best inheritance of the Anglo-Saxon race and the surest guaranty of the fundamental rights of personal security, personal liberty, and private property. Beginning with the county or shire, he regulated and organized its subdivisions in hundreds and tithings, and made those little communities responsible for the maintenance of peace and order in their midst, and of that law of which it has been said "her voice is the harmony of the world, her seat is the bosom of God." The seed thus planted has produced the noblest type of the human race, and has grown into that mighty organism of constitutional freedom which attracts the gaze, and exacts the respect and admiration of mankind. The duty to uphold it was never more pressingly incumbent upon the freeman than at this hour. The issues are made up. Are the people, standing now near the close of the nineteenth century, in the blaze of all its light and civilization, so insensible or indifferent to the dangers which beset it, that they are prepared for its overthrow?

I trust to the patriotism of my countrymen, and have an abiding confidence that they are ready for its defense; that whatever man or whatever party may attempt to thwart their purpose, or to deprive them of their sovereignty by Federal interference with their elections, they are determined and unchangingly resolved to order the soldier away from the polls, and to say to the supervisor and the marshal, "hands off!" Our liberties and institutions will be rescued by their irresistible power, and handed down unimpaired, and in perfect vitality, for the full development of all that is free and glorious in government, and all that is good, and noble, and great, in man.

The South Solid only in its Support of the Constitution.

SPEECH OF HON. J. S. RICHARDSON,

OF SOUTH CAROLINA.

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 24, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. RICHARDSON, of South Carolina, said:

Mr. CHAIRMAN: In all the discussion which has occupied the attention of this House since we have been convened in extra session nothing has given the people whom I in part have the honor to represent so much gratification as to know that the effort to repeal these unconstitutional provisions in our statute laws originated with the North, and has been principally urged and supported by northern members. These provisions are fully as objectionable, if not more odious and oppressive, to the North than they are to the South, and the charge sought to be foisted upon the country that they are southern measures, originated and urged in the interest of the South, is utterly untrue and without any foundation in fact.

The South has had but little to do with them, and beyond defending itself against the unjust, unkind, and in many instances untrue as well as irrelevant, accusations cast upon our people and their Representatives by those whom we would gladly believe were "our brethren," has, in the main, remained a silent listener to all the wild and inflammatory declamation with which the leaders of the republican party have sought to arouse and inflame the passions and prejudices of the people. And I venture to say, when the excitement of the hour and the heat of debate has passed away, nothing in connection with these debates will cause the country deeper humiliation or more anxiety than the fact that honorable and grave legislators, commissioned by the people with the highest and most responsible trusts ever committed into the hands of man, so far forgot the duty they owed to the country and to posterity as to ignore the great questions presented for their consideration, and by all the means within their power, however questionable they might be, directed all their efforts toward maintaining party ascendency.

Who that has witnessed the scenes enacted in this Hall and listened to the debates day after day can help being impressed with the fact that the question sought to be solved by nine-tenths of our republican friends who have participated in this discussion has been, not whether the statute laws sought to be repealed are in conflict with the spirit of the Constitution or in themselves wrong and inexpedient, but whether their continuance on the statute-books can by any means be procured, because it is thought by them that their continuance will enable the republican party to perpetuate or extend its lease of office? This with them has been the prime consideration, this the great question, which has absorbed their eloquence, their learning, and their patriotism.

Our republican friends will of course deny this; but if the charge is not true, if it were not so, why and for what reason, after fourteen years of peace and reconciliation, are the dead embers of that long and sad and bloody war again gathered up by them and rekindled with the fires of hate, of passion, and of prejudice? Why is every unguarded word that is dropped in debate caught up, and with a pertinacity that knows no yielding and admits no explanations tortured into the worst possible construction? Why are the scribblings of any and every visionary and insignificant newspaper writer or editor carefully culled and brought to this Hall and spread before the country as the sentiments of the people of the South? Repudiate these sentiments as we may, denounce and disown them as we do, still they are declared by our republican friends to be the sentiments of nine-tenths of the southern people. And why the exaggerations and misrepresentations that are resorted to in this discussion? Why all this, if with those who use them the all-absorbing question is not how they can best excite and keep alive the passions of hate and prejudice, with the view of securing mere party advantage and working up a solid North against what they call "a solid South?"

Now, in the name of reason and common sense let me ask what has all this to do with the real merit of the questions presented by the proposition to repeal these statutes? The guise is too thin to conceal the real purpose. The country must and will see it, and the people will hold that party responsible who forgetting the great interests of the country, its quiet, its peace, its reconciliation, and its prosperity, seeks by such means to lay bare again the festering sores of a period of blood, of strife, and of civil war.

Speaking for the people of my State, we protest against the spirit and the animus of this discussion. We take no part in any effort which seeks to array one section of our country against another. We claim that the war is over, that the sad past is gone beyond recall; and we would not if we could recall it. We accept in good faith all the issues decided by the war; and turning from the past we claim that the present stares us in the face and its living and momentous issues demand our utmost attention. We cannot think that one of these living issues is to obtain a solid North against a solid South or a solid South against a solid North. What the South wants and what she needs most is permanent and real peace and quiet—peace throughout our whole country, the restoration of confidence and fraternal feeling between all parts and sections of our common country, and just and equal laws in full accord with the spirit of the Constitution. In these and these only do we see any prosperity or hope for our impoverished and devastated people.

Our republican friends talk about a "solid South." In the first place, the South is not solid in its representation; but it is solid in its acceptance of all the issues decided by the war, in its adherence to the Constitution and all the amendments to the Constitution, in its devotion to economy and civil reform, and in its determination to stand by and be true to the peace, the quiet, and the best interest of the whole country. In this spirit would we discuss the questions involved in the proposed repeal of the laws which we have been considering for the last two or three weeks. In the last Congress it was

proposed to repeal the law authorizing the appointment of United States supervisors to be present at and supervise the election and the count, but the repeal sought in this bill does not propose to interfere with the law in this respect in the slightest degree. They are to continue to have and exercise all the powers they ever had, which enabled them to see and report whether the election and count are fair or not, and the only alteration sought to be made in this law is to make it equal in its operations everywhere. As it now stands on the statute-book it is one thing for the country, and an entirely different thing for the city; one thing for democratic New York City, and an entirely different thing for the republican rural districts of New York State. The only power to be taken away from the supervisors by this bill is the power to arrest—in other words, the power to intimidate or interfere in the elections. Everything that looks toward securing a fair election and a fair count is retained, but everything that looks toward interference in the election or intimidation of the voter is proposed to be repealed, whether it be by United States troops, United States marshals, or United States supervisors. The whole argument, therefore, of our republican friends drawn from the necessity for a fair election and a fair count has and can have no weight, because we are not interfering with, and do not propose to interfere with, any of the laws they passed which look to ascertaining whether the election and count have been fair. Without indorsing the constitutionality of these laws we leave them all just as we found them. We say, we want fair elections and fair counts, and only fair elections and fair counts, and we leave all your laws bearing on that point just where we found them. The only laws we propose to repeal in connection with the election are such as enable the political party which happens to be in power, through its head, to interfere in the election, and by its troops and marshals intimidate or influence the voters.

Believing that the questions before us are to be decided calmly and upon their own merit and not upon considerations of party policy or with a view to securing party ascendency, we ask what are these questions?

As we understand them they are:

First. Is it consistent with the spirit and genius of the American Constitution that United States troops should be stationed at the polls, and that United States marshals shall be authorized and permitted to make arrests at the polls upon suspicion and without warrant?

Second. Whether it is wise, safe, and proper to continue in the hands of the President such unusual and extraordinary powers, coupled as they almost always are and must necessarily be with the most dangerous and powerful temptation to their abuse, arising from the natural desire for party ascendency and success.

Third. Is it right and just and fair that it shall continue to be in the power of any one, whether judge or attorney, to limit and confine the jurors who shall sit upon the liberty and property of citizens to those who are true to the interest and behests of one of the great political parties of the country? For to this result the juror's test oath naturally leads, and to this has it practically come in the administration of Federal laws, so far as the South is concerned. A law so unjust, unequal, and partial, and so plainly unconstitutional that so far it has found no advocates on this floor, needs no argument to condemn it.

These are the questions, and the only ones, before us for our decision. A concerted effort has been made, and systematically made, to obscure the real questions at issue by thrusting into the discussion outside considerations which have nothing more to do with the decisions of these questions than the apostolic succession has to do with it. We are told that it will be construed as an attempt to coerce the President, and that it is useless to pass it, for he will veto it. I ask, with all due respect to the President, what have we to do, at this stage of our duties, with the President's veto? How are we to know in this case, any more than in the case of every other law we may decide to make, whether he will veto it or not? He may approve the will of the majority; we cannot tell; and if we could we ought to do what is in our judgment right and best for the country, and leave to him to discharge his duties under the responsibilities that rest upon him. Where is the coercion in our repealing laws that we believe are unwise and against the peace of the country and the spirit of the Constitution? What! Refrain from doing what we believe to be right and for the peace and good of the whole country because there is a suspicion that the President may differ with us in his opinion as to the wisdom of the repeal of these laws? Coercion! Why it really seems that the attempt is being made by the republican leaders to coerce the majority of this House into refraining from the expression of their judgment upon these measures by threatening us with the President's veto. What are we here for—to vote according to our best judgment, or in reference to whether the President will or will not veto the measures and laws we shall send to him? We have been charged with the purpose to starve the Government, when in fact we propose to vote all the money the Government or the Army need, and I trust every democrat will be found voting, when the time comes, to grant all the supplies needed by the Government or by the Army, and that it shall be left alone to our Republican friends to vote against granting them.

By such considerations as these has it been sought to divert the mind from the plain duty and the simple questions which present themselves to the legislator in the issues before us. These questions are so simple and plain when considered in themselves and without the introduction of these outside considerations that one can hardly see the necessity to discuss them. To state them fairly to any just and candid mind is to decide them rightly. They need no arguments to lead the mind to a correct conclusion on them. Left to itself, the mind that has been nurtured and developed in this free land, unwarped by prejudice and passion and uninfluenced by selfish and party motives, would go unbid to a just, true, and correct conclusion on each of the propositions I have presented. I shall not, therefore, consume the time and attention of the committee in advancing any extended argument to sustain the proposition that it is inconsistent with the spirit of the American Constitution that United States troops should be stationed at the polls and that United States marshals be authorized and permitted at the polls to make arrests on mere suspicion and without a warrant. I have coupled these two propositions together because they rest upon the same foundation, were born in the same era, and are part and parcel of the same election machinery. They are unknown to the Constitution, and were utterly unknown to our statute laws until called into being and exercise by the extraordinary condition of civil strife. They were framed to meet the exigencies of a time of war, and until now were never justified upon any other consideration. The time and the circumstances for which they were framed have passed away, and with them should pass away these laws.

He has read the Constitution and statute laws of our country to little purpose who has not learned the lesson that it is one of the cardinal and fundamental principles of our Government, absolutely necessary to its continuance and perpetuity, that our elections should be absolutely free and untrammeled; that the mind (not the person merely) of the electors must be free and unintimidated. To fail in this is to change the very essence of our Government and to make it something else than a free, republican form of government. It being admitted that the mind of the electors must be free and untrammeled, can it be possible that any one can seriously contend that that election is free and untrammeled where United States troops, subject to the orders and control of the man who is recognized as the head and front of a political party, are by his orders stationed where they surround and block the way to the polls, and where, together with the troops, United States marshals, commissioned also by his orders, stand authorized and ready to arrest the electors without warrant and on suspicion? To ask any sane mind to believe such an election free and untrammeled is to ask the mind to believe an impossibility. The Army represents the power, the force, and the majesty of the Government.

It does this alike and as effectually whether fifty, a hundred, or a thousand troops be present. It is at all times awe-inspiring and intimidating to any and all who may be engaged in opposing the will of its Commander-in-Chief. Especially is this so with the unlearned and unlettered mind, and above all is this the case with that large class of voters who believe that it was the blows struck by United States troops which crushed and prostrated their former masters and liberated them and their children from the chains of slavery. To send troops to the polls where these electors are to vote is nothing short of issuing two orders by a republican President—one for the troops to be at the polls and the other for the colored electors to vote the republican ticket. This is well known and fully appreciated by our republican friends on the other side of this House, and hence their great anxiety to retain the use of the Army at the polls. It is anything but a free and unbiased election that they desire. They want an election that shall be conducted under this the greatest possible controlling and intimidating influence that can be brought to bear on the colored voter; an influence equivalent to compelling him to vote the republican ticket. This is the law they want to carry elections with in the South, while in the North they want United States marshals to arrest without warrant and on suspicion. No one can doubt this who witnessed the elections conducted under bayonet rule in the South in 1876, when the soldier, with drawn sword in hand, directed who should vote. Lest this astounding statement should be doubted, I quote from the uncontradicted testimony taken in the contested-election case of Tillman *vs.* Smalls. At page 576 Mr. T. I. Adams, testifying as to the voting in South Carolina in 1876 at box No. 2, known as the school-house box, makes the following sworn statement:

Question. State, Mr. Adams, what you saw while standing in the school-house waiting to vote.

Answer. I saw Lieutenant Hoyt jump in the window; from three to five soldiers followed him; he went up very near the box and drew his saber and had the soldiers fix their bayonets.

Q. When he drew his sword was his attitude a threatening one?

A. It was; it would have frightened a timid man, to say the least of it.

Q. What did the soldiers do after they fixed their bayonets?

A. They remained in that attitude until I left. I was there about thirty minutes There was a company outside of the house in plain view of the building.

Mr. Abraham Jones, an aged and most respectable citizen, testifies, at page 595, as follows:

Question. Have you not been a member of the Legislature, and have you not filled other offices in the county?

Answer. I was elected to the Legislature six times, and have held other offices ever since from the time I was twenty-one.

Q. Did you vote; and, if you did, where did you vote?

A. At Morrison's school-house that day.

Q. How long did you remain there that day?

A. I was there from two o'clock until nearly dark.

Q. While you were there did you see any intimidation by the whites?

A. No; I did not. I saw men with red shirts riding about the streets hallooing, but did not see any intimidation attempted by them.

Q. Did you notice anything peculiar about the way the election was conducted? If so, state it fully.

A. I saw the United States soldiers as a guard around the door outside and a crowd of voters outside pressing this guard, who kept them back with their guns, and an officer in command, with his sword drawn; and he would select with his sword by touching those who were to go in next to vote. As the colored man at the door would call out, "Send in ten men," the officer would again select by touching with his sword those to go, not taking them as they came, but selecting them from the crowd, sometimes reaching over to touch one behind another, and sometimes skipping two or three. I was selected from the crowd with another white man at the same time, and none dared go in but those who were so touched by this officer. When they had voted, they were let out of a window.

It will be remembered that these United States soldiers were sent into the State without the State Legislature having been convened or attempted to be convened, as is required by the State constitution to be done before the governor is authorized or empowered to ask the President to send them; that they were sent at a time when General Ruger, a United States officer, then in South Carolina, in command of a few troops stationed there, had telegraphed the President, "If I need more troops I will send you a dispatch telling you I need them;" and when every judge in South Carolina, all republicans except one, had certified that the State was in peace and quiet and in ready obedience to the civil process of the law.

Here is what Governor HAMPTON and the judges said on this subject:

SUMTER, *October* 7, 1876.

DEAR SIR: In view of the grave charges made by Governor Chamberlain against the democratic party and their mode of conducting the present canvass in this State to Colonel Haskell, charges declaring that the State is an armed camp, and that our meetings are attended by organized armed bodies, may I ask you as a republican and as the chief-justice of the State to say if in your observation these charges are borne out by the facts of the case? You saw to-day one of the largest meetings we have held, and you can therefore speak from experience and personal observation. I have been through seventeen of the counties of the State, and I have addressed, I am sure, at least one hundred thousand people, and I can say with perfect truth that I have not seen one single armed body of men nor has one disturbance occurred at any of these vast meetings. My solicitude for the good name of our State will, I trust, be a sufficient excuse for my calling your attention to this matter. Requesting an early answer,

I am, very respectfully, your obedient servant,

WADE HAMPTON.

To His Honor F. J. MOSES, *Chief-Justice*.

THE REPLY.

SUMTER, S. C., *October* 7, 1876.

MY DEAR SIR: I am just in receipt of your note, and at once reply to the same. For the last three or four months I have not been in any of the counties but those of Sumter and Richland. Within that period I have been present at only two political meetings, one held by the republican party and the other, to-day at this place, by the democrats. Although I was at the latter but a short time, I was for the greater part of the day in the streets, with every opportunity of observing the behavior and demeanor of the large concourse which the occasion had brought together. The collection consisted of citizens on foot and horseback; I saw in no instance any exhibition of arms or any behavior inconsistent with the strictest propriety. At the republican meeting to which I have above referred there was no attempt at interruption. I shall require very strong evidence to satisfy me that South Carolina is an armed camp. I know of nothing which would lead me so to conclude. For myself I do not know of anything which would make me doubtful in any part of the State of enjoying the same security which I feel attaches to me under my own roof. I trust the day is far distant when violations of the peace in our own borders will require the interference of any arm more potent than that of the law.

Very respectfully, yours,

F. J. MOSES.

To General WADE HAMPTON.

VIEWS OF JUSTICE WILLARD.

In reply to letters from Colonel A. C. Haskell, chairman of the democratic executive committee, Associate-Justice Willard, (republican,) of the supreme court, writes:

COLUMBIA, S. C., *October* 7, 1876.

DEAR SIR: Your note of this date is before me, asking an expression of my views as to the existence of rancor and manifestations of violence in the character of the democratic canvass of this State. I am unable to throw much light on this subject for two reasons. In the first place, I have been absent from the State for the last three months, and only a week has passed since my return to this city. In the second place, my ideas of the character and responsibilities of the judicial office have led me at all times to abstain from participating in political action, and accordingly I have little information except that derived from public rumor and the newspapers of what has transpired at political gatherings. I can only say that I have witnessed nothing beyond the circumstances generally characteristic of an excited political canvass. I have seen no violence; on the contrary, as far as I have had intercourse with gentlemen of your party, I have observed less disposition to excited statement and personal bitterness than during any of the previous political campaigns of this State. I sincerely hope that the fears of many, that the lawless portion of the community will be permitted to disturb the peace and injure the good name of the State, are groundless. I am satisfied that it is the intention of the leading members of your party to prevent such a state of things, and I believe they have the ability to do so.

Very respectfully, your obedient servant,

A. J. WILLARD.

To COLONEL A. C. HASKELL.

JUDGE MACKEY'S PROTEST.

Circuit Judge T. J. Mackey (republican) telegraphs as follows:

CHESTER, S. C., *October* 7.

To A. C. HASKELL,
Chairman State Democratic Committee, Columbia, S. C.:

In reply to your inquiry of this date, I would state that peace and order prevail throughout the limits of the sixth judicial circuit, embracing the four counties of York, Chester, Fairfield, and Lancaster. In this circuit no armed organizations obstruct judicial proceedings, and no resistance has been offered to the due execution of legal process. * * * I have traversed many counties in the State canvassing for Hayes and Wheeler and in favor of Chamberlain for governor during the past sixty days, and I have nowhere seen an attempt on the part of any portion of the population to suppress the right of free speech by armed violence.

* * * * * * *

T. J. MACKEY, *Judge*.

THE OPINION OF JUDGE COOKE.

Judge T. H. Cooke (republican) writes:

COLUMBIA, *October* 7.

To Col. A. C. HASKELL,
Chairman of the Executive Committee of the Democratic Party.

DEAR SIR: I have just read the proclamation of Governor Chamberlain as to a reign of terror in this State, and his inability to enforce the laws through the ordinary channel, and I must say that the causes alleged for issuing the same do not apply to the eighth circuit, over which I preside, nor do I believe they have any existence as to any other portion of the State.

I am, very respectfully,

THOMPSON H. COOKE,
Judge of the Eighth Circuit, State of South Carolina.

THE LAW SUPREME IN JUDGE SHAW'S CIRCUIT.

In response to an inquiry of Colonel Haskell, Judge Shaw, of the third circuit, telegraphs as follows:

SUMTER, *October* 9, 1876.

I know of no lawlessness or violence which the law cannot remedy in this circuit. The law is maintained and administered without difficulty.

A. J. SHAW,
Judge Third Circuit.

To Colonel A. C. HASKELL.

NO RESISTANCE TO LAW IN THE SEVENTH CIRCUIT.

The following telegram was received this afternoon in response to one from the chairman of the democratic executive committee:

NEWBERRY, *October* 9, 1876.

In reply to your inquiry I have to say that I am in no wise prepared to express any just opinion upon the peace of the State except so far as concerns the circuit over which I have the honor to preside. Since my appointment to the bench I have been engrossed by my judicial duties, which have been and are onerous. They have left me without time or inclination to become advised of particular matters outside of my circuit. I am not aware of any resistance to the process of the court in this county, where I have been holding court for a week. Unusual quiet prevails. There seems to be a public apprehension that the times are out of joint, and a general anxiety that public order should be preserved. Speaking for this circuit, I can only say that, while the public mind is of course inflamed by the ardor of the campaign, I have not yet been confronted by any organized or individual resistance to the authority of the courts. The good sense of the people will continue to preserve the public peace.

L. C. NORTHROP,
Judge Seventh Circuit.

COLUMBIA, SOUTH CAROLINA, *October* 10.

DEAR SIR: I have the honor to acknowledge the receipt of your letter of this date, propounding certain questions in reference to the condition of the judicial circuits of the State and certain military organizations. After a month's absence from home I returned about a week ago, and since that time I have been exclusively occupied with official affairs, holding the regular term of the circuit courts for this county. As to the alleged lawlessness and violence in other portions of the State, I know nothing. I have seen statements in the newspapers giving different and entirely contradictory accounts of the transactions referred to in the proclamation of Governor Chamberlain, but have not examined the testimony or been in either of the localities. Since my return home I have been treated by my acquaintances of both political parties with the usual kindness and respect, and I have seen no exhibition of violence and lawlessness. No resistance to judicial process or authority has been attempted in this circuit, to my knowledge, since I have had the honor to be its presiding judge. I am not acquainted with any other than the Richland rifle and the Richland volunteer rifle clubs. I do not know of my own knowledge, nor has any complaint been made to me, of any acts of violence, open or secret, having been committed by these companies. My acquaintance with the members of those organizations is quite general, and, from my knowledge of the personal character of the gentlemen composing them, I should think no danger to the peace and good order of society could be rationally apprehended from that source. Withdrawn from partisan politics, as a citizen I feel a deep interest in the welfare of the State, and I hope those of both parties having charge of the canvass will exercise such prudence, justice, and fairness as will insure a free, fair, and full expression of the popular will.

I have the honor to be, respectfully, your obedient servant,

R. B. CARPENTER.

Colonel A. C. HASKELL,
Chairman State Democratic Executive Committee.

THE STATE OF SOUTH CAROLINA:

Personally appeared before me, C. P. Townsend, who, after being duly sworn, says that he is judge of the fourth judicial circuit of the State of South Carolina, and has been since August, 1872; that during the last political campaign in South Carolina, extending from July to November 7, 1876, there was no obstruction to the execution of the process of the courts throughout his circuit, so far as his knowledge extended, and the law was administered and enforced by the ordinary method provided by the General Assembly in accordance with the State constitution; and that there was no lawlessness or violence, at any time during the campaign, which could not have been checked and remedied by the process of the courts.

C. P. TOWNSEND.

Sworn to and subscribed before me this 2d March, 1877.

[SEAL.] THOS. W. BEATY, *C. C. P.*

Not only was the State in peace and quiet and the civil process of the law unobstructed, but the democratic party had adopted a platform indorsing all the amendments to the Constitution and professing principles so broad and liberal that all the citizens of the State could stand upon it. They were engaged in carrying out these principles, and all the people, colored as well as white, were fast aligning themselves on this platform. Here is the platform unanimously adopted by the democracy of the State:

THE PLATFORM.

The democratic party of South Carolina, in convention assembled, announces the following as its platform of principles:

We declare our acceptance, in perfect good faith, of the thirteenth, fourteenth, and fifteenth amendments to the Federal Constitution. Accepting and standing upon them, we turn from the settled and final past to the great living and momentous issues of the present and the future.

We adopt the platform of principles announced by the national democratic party, recently assembled at Saint Louis, and pledge ourselves to a full and hearty co-operation in securing the election of its distinguished nominees, Samuel J. Tilden,

of New York, and Thomas A. Hendricks, of Indiana, and believe that under the wise and just administration of its distinguished reform leader, assisted by the eminently patriotic and able counselors by whom he will be surrounded, peace and prosperity will again bless our country, and the dissensions, confusion, and maladministration of the past eight years will give place to concord, good government, and a thorough restoration of the Union.

In accordance with the declarations of that platform, and the utterances and acts of our distinguished leader, we demand a genuine and thorough reform in the State of South Carolina, and call upon all of its citizens, irrespective of race, color, or previous condition, to rally with us to its redemption, for it is evident that substantial and lasting reform is impossible within the ranks of the republican party of this State.

We charge that party with arraying race against race, creating disturbances, and fomenting difficulties; with prostituting the elective franchise, tampering with the ballot-box, and holding unfair and fraudulent elections; with having accumulated an enormous debt, mismanaged the finances, and injured the credit of the State; with levying exorbitant taxes and squandering them when collected, thus wringing from the toil and livelihood of the honest poor man of the State a large percentum of his hard earnings without giving in return any compensation therefor, and has hopelessly involved in debt a majority of the counties of the State.

Its management of our penal and charitable institutions is a shame and a disgrace.

We charge its legislation as demoralizing, partisan, and disgraceful; and the venality and corruption which have characterized every branch of the government, executive, legislative, and judicial, have no parallel in the history of nations.

It has created a multiplicity of unnecessary and useless officers complicated in their system and unnecessarily expensive, and to crown its disgraceful rule it has attempted to elevate to the bench two most corrupt and degraded men.

It can never purify itself, give good and impartial government, or by its moral force and character exercise, in its full sovereignty, the law of the land.

We do not charge this condition of things, which every patriot must deeply deplore, upon the masses of the party, but upon their leaders who have made such fatal use of their confidence and trust, for it is our firm conviction that all the good people of the State, of both races, desire peace and prosperity.

We therefore will call upon all of our fellow-citizens, irrespective of race or past party affiliation, to join with us in restoring the good name of their State, and to again elevate it to a place of dignity and character among the Commonwealths of this great country.

We discountenance all disturbance of the peace of the State, and denounce all instigators and promoters thereof, and earnestly call upon all of our own fellow-citizens, irrespective of party lines, to exercise forbearance and cultivate good-will. And if the government of the State is committed to our control, we pledge ourselves to protect the persons, rights, and property of all its people and to speedily bring to summary justice any who dare violate them.

We desire a fair, peaceable election, appealing to the reason and not the passion of the people, and demand of the republican party a fair showing in the appointment of commissioners of election.

We demand a fair election and a fair count.

We call upon all of the patriot sons of Carolina to join us.

We ask but a trial of committing the State to our keeping, and if good government, security, protection, and prosperity, do not dawn on an overtaxed, despoiled, and disheartened people, then drive us from power with scorn and indignation.

Our object is reform, retrenchment, and relief; that by honesty and economy we may reduce the taxes and lighten the burdens of the people, giving, at the same time, absolute security to the rights and property of all.

Upon this paramount issue we cordially invite the co-operation of every democrat and republican who is earnest and willing in this crisis of our State to unite with us in this great work.

That the democratic party in the State were true to the principles contained in this platform and were engaged in carrying them into practice is abundantly proven by scores of witnesses, both white and colored, republican and democratic. I shall not cumber my speech with quotations from their testimony which fills hundreds of pages in the testimony taken on the "recent elections in South Carolina" in 1876, and also in the election case of Richardson against Rainey. I will simply refer this committee to the testimony of Governor HAMPTON on this subject. It is found on page 248 of the testimony last referred to:

WADE HAMPTON, governor of South Carolina, being called and duly sworn, deposes and says:

Question. State what was the spirit of the campaign in 1876, as conducted by the democrats and republicans.

Answer. On the part of the democrats the effort was to make the campaign thoroughly conservative and conciliatory. I was in all the counties of the State, and saw no intimidation by democratic whites or negroes against the republicans, white or colored. The only evidence of disorder I saw was in the first congressional district, where the colored republican voters endeavored to intimidate those of their own color who wanted to vote for the democrats; this was notably the case in Georgetown, where they used every effort to drive the colored voters from joining the democrats, and I heard threats of violence used by them. I was satisfied but for that pressure a greater number of the colored people would vote with the democrats. I believe that this spirit of race proscription was exercised all over the State, and exercised a very powerful and detrimental influence against the democratic party. All the addresses of the democratic speakers in the first congressional district were conciliatory. Mr. Richardson accompanied me and took the extreme course of conciliation.

Q. Did there exist any necessity for the proclamations of President Grant and Governor Chamberlain disbanding the rifle clubs?

A. In my judgment there was no necessity. The judges all stated that there was no resistance to legal process; in my canvass I saw no evidence of interference with or resistance to law. The whole effort that I made during the canvass was to assure the people of the absolute necessity of preserving peace and abstinence from violence. As soon as the proclamation appeared I advised all the clubs to disband, and at no single meeting attended by me in the State was there an armed organization of men.

Under such circumstances, in 1876 fifteen hundred and twenty-six United States troops, according to the "official statement" of Adjutant-General E. D. Townsend, were sent into South Carolina and stationed at sixty-seven different election precincts in that State, and at such points as would best subserve the interest of the republican party in the election. Can it be doubted after this that in 1876 the United States troops were used in South Carolina as a political influence to secure the election for the republican party? If this was not the case why the partisan disposition of the troops? Governor HAMPTON in his evidence already referred to states that after the United States troops were brought into the State, requests were made that they be sent to certain localities "where the republicans were in the majority, to protect colored democrats," and it is in proof that they "were not sent." Here is his testimony:

Question. What was the effect of these proclamations and of the introduction of United States troops upon the colored voters and upon the election?

Answer. I think that the presence of the troops produced a great change among the colored voters, from the fact that they were told that the troops were placed here for the purpose of making them vote the republican ticket. That the troops not being placed where they could have given protection to the colored democrats exercised an influence injurious to the democratic cause. I had applications from several places asking that troops should be placed to protect colored democrats. I did apply to General Ruger; troops were not sent, on the ground that he had not troops enough to send to the particular places. Troops were sent generally in larger numbers in the upper counties where the whites were in majority. In the low country where the republicans were in majority fewer troops were sent. Application was made for troops in Georgetown, to protect democratic colored voters. I do not think they were sent until the day of election, if then.

In addition to this, colored citizens in Georgetown County, where the republicans very largely predominated, sent a petition to General Ruger, and asked that United States troops be sent there to protect them against the violence of colored republicans, and the request was denied.

Mr. Henry Smith, of Georgetown County, South Carolina, on page 128 of the testimony in the contested-election case last quoted, says:

In consequence of the mode in which the republicans conducted the canvass, he thought there was danger to himself and other colored democrats. Deponent went to Columbia, South Carolina, to see General Ruger. He represented to him the danger to the colored democrats, and the necessity they were in for the United States troops for their protection. He carried with him a petition for troops, representing the danger in which the colored people who wanted to vote with the democrats were placed by the violent behavior and threats of the republicans and their leaders. This was about twenty days before the election, or about the 29th day of October. Deponent states that the troops were promised, but they never came. They had plenty of time to reach here before election day.

It may be said by the republican leaders, and doubtless will be said by them, that the troops were sent into the State "to keep the peace at the polls." But if this were the case, why the partisan disposition of them? Why remove them from the counties as soon as the election was over, and before the result was declared, at a time when it is known there was more excitement than at the election or at any time during the campaign—at a time when there were two rival State governments struggling for supremacy in the State, each with its own set of officials and supporters in every county, the large majority of the blacks warmly asserting the election and the right of one and the whites of the other—at a time when the negroes, under the lead or advice of the routed "robber band," were burning the buildings of the whites, stealing their property, and assembling as "militia" or mobs to assail the whites and terrorize communities, and when the whites, maddened by these atrocities, were held back from retaliation only by the word of Hampton? Why at that juncture are the troops withdrawn from the counties and the peace of the country all at once lost sight of and left to take care of itself, while troops are massed at Columbia, the capital of the State, and quartered in the halls of our Legislature? Why this, I ask, if the troops were there to keep the peace, and not as a political influence in the interest of the republican party?

I know, Mr. Chairman, that it has been said in the other end of the Capitol and on this floor that in South Carolina in 1876 colored electors were intimidated and deterred from casting their ballots for the candidate of their choice by the democrats. That this is all idle talk, and a mere pretext on which to justify the illegal use of troops in the election, is conclusively and indisputably shown by the following facts, taken from the mouths of republican witnesses. By the State census of South Carolina taken in 1875, by a republican and by authority of the republican administration of the State, the total number of voters in the entire State was 184,930, and the number of votes actually polled in the election of 1876, according to the republican returning board, was 183,388.

Vote for governor, election of 1874.

D. H. Chamberlain	80,403
John T. Green	68,818

Vote for governor, election of 1876.

Wade Hampton	92,261
D. H. Chamberlain	91,127

OFFICE SECRETARY OF STATE.

I, H. E. Hayne, secretary of state, do hereby certify that the foregoing is a true and correct statement of the vote for governor at the general elections of 1874 and 1876, as appears by the commissioners' returns now on file in this office.

Given under my hand and the seal of the State, at Columbia, this 9th day of December, 1876, and in the one hundred and first year of American Independence.

[SEAL.] H. E. HAYNE,
Secretary of State.

It appears, then, that every single elector in a total of 184,930 actually voted excepting 1,542. It can scarce be maintained in the face of these figures that there was intimidation on the part of democrats in South Carolina in 1876, and it can be said with still less grace and truth that there was any in 1878. In fact the charge of intimidation in 1878 started against the State has utterly failed and has been abandoned. The republican investigating committee, known as the Teller committee, after patient search has failed to find anything to sustain or support such a charge, and the republican party has been driven from their issue of the bloody-shirt in South Carolina, and has taken refuge under the cheap charge, so often made by them and applied to any and every State where they can find nothing better to charge, of fraud in the election. This charge of fraud in elections is

not one, as I have already shown, raised by any of the provisions of the bill under discussion or of the Army appropriation bill. It has been lugged into this discussion by those who can find nothing better to talk about, and has no place here. I shall not, therefore, enter into any discussion of this charge further than to refute a gratuitous and utterly unfounded and unsupported charge made against a portion of the constituency I have the honor to represent.

The honorable member from Wisconsin, [Mr. WILLIAMS,] in his speech on the bill to make appropriations for the support of the Army, speaking of the election at Kingstree, in South Carolina, uses this language:

> I tell you that right then and there the United States was made to eat the leek and to taste garlic, and from that time and on to the wee small hours of the morning onion-skin ballots went in unchallenged, but not uncounted.

Now, Mr. Chairman, that was a wholly unwarranted and unsupported assertion, which has its foundation for truth only in the imagination of the honorable member. There is not one word in all the evidence taken by the Teller committee, not a word in the testimony of the supervisor of election referred to, or in that of any of the rabid partisan republican negroes who were examined in reference to the election at Kingstree or in the entire county of Williamsburgh, which justifies the statement of the honorable member. None of them assert that a single "onion-skin" or tissue ballot was cast or counted at Kingstree or in the entire county of Williamsburgh, and the fact is that not one was cast or counted there or in that entire county. This only shows out of what whole cloth such statements are made and paraded before the public for political purposes by our republican friends on the other side of this House. The country can judge by this instance of how much credit is to be attached to the many sensational statements paraded before it by the party who wave the "bloody shirt" and cry "fraud" at every election.

But, Mr. Chairman, I have digressed to refute this unjust and unfounded charge. I claim that I have shown by the facts that I have brought to the attention of this committee that the power to send United States troops to the polls is a most dangerous power to be vested in any President; that the temptation to its abuse is stronger than the firmest President can resist in times of high party excitement, and that in the past the power has been abused and the troops have been used as a political influence with which to secure and carry elections. Is it safe to continue such power in the hands of any President? Would our republican friends be willing to leave such power in the hands of a democratic President? As an humble member of the democratic party I am unwilling it should be vested in a democratic President, and certainly not more willing to leave it in the hands of a republican President.

An invasion in our system of government, dangerous in its tendencies and destructive of a "free ballot" in practice, the use or presence of troops in elections is abhorrent to all just ideas of a "free ballot" or a "free government." From time immemorial our English ancestors have regarded the presence of troops in elections as an interference with the election. Blackstone, speaking of troops at elections in England, uses this language:

> And as it is essential to the very being of Parliament that elections should be absolutely free, therefore all undue influences upon the electors are illegal and strongly prohibited. For Mr. Locke ranks it among those breaches of trust in the executive magistrate which, according to his notions, amount to a dissolution of the government "if he employs the force, treasure, and offices of the society to corrupt the representatives or openly to pre-engage the electors and prescribe what manner of persons shall be chosen. For thus to regulate candidates and electors and new-model the ways of elections, what is it," says he, "but to cut up the government by the roots and poison the very fountain of public security." As soon, therefore, as the time and place of election, either in counties or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the poll is ended.—*Blackstone's Commentaries*, volume 1, page 177.

Our English ancestors show with what abhorrence they regarded the presence of troops at elections and with what care they guarded the freedom of the ballot in the law they enacted in reference to elections in Scotland. This law is found in "the act for regulating the quartering of soldiers during the time of the elections of members to serve in Parliament," and is in these words:

> *Be it enacted by the King's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in Parliament assembled, and by the authority of the same*, That when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or any member or members to serve in Parliament, shall be appointed to be made, the secretary at war for the time being, or in case there shall be no secretary at war then such person who shall officiate in the place of the secretary at war, shall, and is hereby, required, at some convenient time before the day appointed for such election, to issue and send forth proper orders, in writing, for the removal of every such regiment, troop, or company, or other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place where such elections shall be appointed to be made, out of every such city, borough, town, or place one day at least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, as aforesaid, until one day at least after the poll to be taken at such election shall be ended and the poll-books closed.

For centuries the English people have had no wish or cause to change this wise provision of their laws. Shall the Englishman guard the purity and freedom of the ballot-box with any more jealous care than we are willing to do? Is his liberty more dear to him than ours is to the American people? And shall we profit nothing from the wisdom and experience of centuries or from the blood-bought and hard-earned safeguards of our English ancestry?

Protection, Justice, and Peace.

SPEECH OF HON. C. G. WILLIAMS,

OF WISCONSIN,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 24, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

CONSTITUTIONAL ARGUMENT USELESS.

Mr. WILLIAMS, of Wisconsin, said:

Mr. CHAIRMAN: Early in this debate I attempted to point out the sources whence the right and power to enact these laws were derived. The outlines so faintly sketched then have since been drawn deeper and broader in the course of the debate, and so filled out that discussion has merged itself in demonstration. Yet ably and triumphantly as this has been done, I doubt either its necessity or utility. If fifty years of argument and four years of horrid war could not settle the question of State rights on this continent forever, I doubt whether anything that can be said here will do it. It would seem as though the opposition had very adroitly invited discussion to this branch of the subject with a view of drawing the attention away from the facts involved in the late elections and the consequent necessity of retaining these laws upon the statute-book.

Be this as it may, the constitutional power of Congress to enact them has been clearly traced and is fully understood. The Constitution, conferring first upon the State Legislatures and last and ultimately upon Congress the power to regulate the time, place, and manner of holding elections for Senators and Representatives, except as to the place of choosing Senators; the fact that the existence of this power has been maintained by all the ablest writers upon the subject, including Madison, Hamilton, Story, and others; and the further fact that the State possessed no such power prior to the adoption of the Constitution, but that it was born of that instrument and conferred at the same instant of time both upon the State Legislatures and upon Congress—on the one conditionally and on the other finally and absolutely, the same identical words defining the nature and extent of the grant in both; and the further fact that Congress has regulated unquestioned and unchallenged the time and manner of choosing United States Senators; and the fact also that these election laws have been in force over thirteen years, and have been bitterly opposed, resisted, and denounced during all that time, repeated attempts having been made to repeal them, yet no attempt whatever to test their constitutionality in the courts, but, on the contrary, in scores of prosecutions, their validity having been upheld and maintained, I take it that no one now, and especially no lawyer, seriously questions their constitutionality.

FULL POWER TO ENFORCE CONSTITUTIONAL LAWS.

Being valid and constitutional laws of the United States the power to enforce them follows as logically as the law of self-defense. The constitutional injunction upon the President to "take care that the laws be faithfully executed" and other auxiliary constitutional powers conferred upon him, which have been abundantly elucidated in this debate, together with the statutes of 1792, 1795, 1807, 1861, 1865, 1870, and 1871, and the common-law maxims applicable to the enforcement of law, render not only his powers full and complete, but make his duties and responsibilities as plain as the sun at noonday.

Sir, I repeat that so long as we will consent to discuss abstract propositions pertaining to the Constitution and the laws our opponents will meet us on every field, matching statement with statement, speculation with speculation, theory with theory, construction with construction, stretching out even to the crack of doom; for if there is anything which delights the heart of the southern statesman and thrills him with new life it is the discussion of these constitutional conundrums. "Though native and to the manner born" the custom is seldom "honored in the breach." It is a peculiarity of southern peoples, and especially of the Latin races. They revel in speculation and theory, whether found in the realm of diplomacy or the forum of debate, and, sir, so long as the universal Yankee nation will consent to "swap" words for words, theory for theory, sentiment for sentiment, and accept fine writing and fine talking for fact and performance, it will find itself outgeneraled and beaten in every field, from the line of the Potomac down even to the southern borders of Mexico. It is therefore gratifying to see this debate in both Houses of Congress coming back to the solid facts which underlie it, and which show that these laws should not only be retained upon the statute-book, but should be enforced with even more rigor than ever before. There seems to have been a disposition on the part of politicians, journalists, and statesmen alike to want to shun, or at least not to dwell upon, these horrid and sickening details, but instead to deal with general principles and results involved in them. The consequence is, that upon no subject under heaven are the American people more ignorant as to the terrible realities and details of these very events spreading over the last six years of American history, which have been gathered upon sworn testimony by congressional committees, and seem to be

entombed as effectually in the fourteen volumes of congressional reports standing on yonder library shelves as though they were buried in the catacombs of Egypt.

CANNOT BARTER ANY RIGHTS OF THE WEAK.

Why is this so, Mr. Chairman? Because, sir, this is the second attempt on the part of the American people to buy the peace and prosperity of the strong by bartering away the rights, the liberties, and even the lives of the weak. But, thank God, a just Providence will deal upon no such terms. For almost eighty years we sailed along, flaunting the breeze with the motto of "equal rights," while we carried slavery under the hatches, and fancied that no storm could overtake us, but it came at last and we know the result. For the last six years we have outraged justice, violated every principle of right, and defied the vengeance of Heaven. We have deserted the citizen and mocked at his calamities. We have turned a deaf ear to his cries, his entreaties, his prayers, his tears. We have turned him over to the rapacity of the mob; seen him hounded like a hare or shot like a dog. We have seen his dwelling surrounded by night riders, his wife and children filled with terror, and himself murdered in cold blood. We have seen this, not in one instance, but in hundreds if not thousands. And we have responded with a doubt or a sneer. In short, we have sought to crush down every rising sentiment of humanity, and install in its place the stony-eyed monster of commercial greed. We have fancied that we could do all this and rest in security.

But to-day, while we fain would sleep, the rumbling of the earthquake is heard under the very walls of this Capitol! We have been put to flight by an epithet. More men have quailed before the taunt of "bloody shirt" and "bayonet rule" than ever faltered at the cannon's mouth. If our opponents have been consistent, so also have they been persevering and vigorous.

SPIRIT OF DEMOCRACY THE SAME.

The spirit of the opposition from the very beginning has been the same. I make all proper exceptions as to factions and individuals. Hundreds and thousands of the latter have attested their patriotism and their valor on battle-fields in a way which no man can question. Hundreds and thousands of others are men of high personal character and worth. I speak not of these, I speak not of individuals at all, but I speak of that which passes under the name of modern democracy as a living, active force in American politics and statesmanship, and I say that its spirit is everywhere the same. It is bounded by no geographical lines. It is homogeneous throughout the country. It has held on the even tenor of its way, and I maintain, sir, that it has been consistent. No act done, no offense committed, no policy pursued, whether it be denominated treason, rebellion, cruelty, or oppression, that has not had its heartfelt sympathy, if not its open and active support. Through all these years of outrage and wrong it has not had one word for human freedom; on the contrary, with a pertinacity worthy of a better cause, it has gone steadily in the opposite direction. By its consent not one offender has been arrested, not one wrong been righted, not one outrage denounced; but for cruelties and atrocities which shock humanity and shame all the annals of barbarism, it has had nothing but scoffing, jeers, and laughter!

In all this, sir—I regret to say it, but it is true—northern Bourbonism has differed in nothing from southern treason save in the qualities of manhood and courage. In all things else it has been logical and consistent, as it has been to every principle of national unity and national honor false and treacherous. Democracy, though divided in council, was one in spirit. Opposed to the suppression of the rebellion by force, it was opposed to every agency invoked for its suppression. When the flag was fired upon it opposed coercion. When treason trained its guns upon this Capitol it cried out against the invasion of a sovereign State. When troops were levied it declared that the rebellion could never be put down by force of arms. When funds were required it insisted that the obligations of the Government were not worth the paper on which they were printed. When colored troops were enlisted it said they could never be made to fight, and when they had fought valiantly for a year or more, in this very Chamber it sought to put an amendment upon the Army appropriation bill declaring that not one dollar thus appropriated should be paid to a colored soldier, and men are here to-day who voted for that measure. When a constitutional amendment was brought forward to liberate the wives and children of colored men fighting for the country, democracy opposed it by every means in its power, as it afterward opposed emancipation, citizenship, and enfranchisement.

In its estimation every battle fought was a violation of the Constitution and every shot fired should first have been ordered by the judgment of a court. Military arrests were the acts of a tyrant; and brave men who bore the grand old banner through the sulphurous storm of war were denominated hirelings and butchers! Let no man say to-day that these were not the sentiments which democracy in the darkest hour of the nation's life lauded and cheered to the echo.

If this was its spirit north of the line how was it south? I tear open no "bleeding wounds;" I "fan no smoldering embers;" I bring here no ghastly skeletons from battle-field or prison-pen. Let the groans of the dying and the wails of the living die out with the roar of the conflict which proclaimed that at last the great civil war was over.

SOUTHERN DEMOCRACY.

But when we come to Appomattox, what has been the spirit of southern democracy since, always sympathized with and upheld by its northern allies? Forced to surrender, it was allowed to march out with its side-arms and personal effects. Paroled upon its honor, its votaries were allowed to depart in peace. Many of its leaders, apparently conscious of the enormity of their crime, fled to foreign shores for protection, while the greatest leader of all sought safety in ignoble disguise. Suddenly discovering that nobody had been hung, as somebody undoubtedly ought to have been, the reign of pretension commenced, and has been successfully brought down to this very hour. Seeing that the penalties which it so confidently expected were not to be imposed, it at once assumed an attitude of demand and insisted that having accepted the situation and finally consented not to demolish the Army which captured it, it should resume all its rights of person and property, and be permitted to take part in the affairs of the Government precisely as though it had made no attempt to destroy it. It admitted that all was lost but its honor, but insisted then, as it insists now, that that remained untainted and untouched!

It was trusted in 1868, and the "black laws" of South Carolina and Mississippi were the result, reducing the colored man to a condition worse than slavery. It piled upon him all the burdens of the slave and took away all the responsibilities of the master. In 1870, 1871, 1872, and 1873 "general amnesty and universal suffrage" was the motto on every banner. General amnesty was granted and kukluxism was the response. Its existence was denied of course, as the existence of all wrongs is denied to-day. New State constitutions and a republican form of government in fact being insisted upon and inaugurated in the South, white democracy was invited, yea, implored, by black and white alike to take part in public affairs and guide the freedman in his new-found rights. This proffer was met by lordly contempt and the proclamation put forth that this was a white man's government. Then came the reign of the Knights of the White Camelia, white-liners, white-leaguers, night riders, regulators, rifle clubs, red-shirts, and ruffians generally, and they have written across this country one broad chapter of blood!

BOGUS FREEDOM WORSE THAN SLAVERY.

Sir, go down into all the horrors and hell of slavery, bring up from its profoundest depths all its modes of torture, the whip, the thumbscrew, the shackle, the hound, the fire, and the faggot, unearth and bring to light all that is monstrous and damning about it, and I stand here to declare that in no twenty-five years of its history have such cruelties been inflicted upon the black man as he has suffered during the last ten years under this curse of pretended freedom; more lives have been sacrificed, more murders committed, more people terrified, maltreated, defrauded, maimed, and killed than the darkest hour of slavery ever dreamed of. How grandly we republicans boast that "we liberated the slave;" yes, we did, indeed, liberate him as a slave, and we clothed him with citizenship, but then we abandon him as an outlaw. Why, sir, the pasteboard crown which the bespangled harlequin of the ring wears, carries with it more significance, than the tiara of American citizenship when placed upon the head of a man, whom the meanest may spit upon and the vilest may slay!

DEMOCRATIC DEMAND AND APPEAL.

Yet when the United States Government, in the most natural and ordinary manner, sought to place force enough in the South to protect the citizen and preserve the peace, southern democracy assumed an attitude at once of defiance and appeal. On the one hand it declared that the Anglo-Saxon, the refined, the rich, and the intelligent, must and would rule. Put into plain English this meant, that while it professed to "accept the situation" it did not intend to do any such thing, but that, Constitution or no Constitution, law or no law, Government or no Government, the ruling white classes of the South would have their own way in the future as they had done in the past, though it should require tumult and bloodshed to accomplish it. Where the negro's vote would not change the result he would be allowed to cast it; where it would, he would either not be permitted to vote at all or his vote would not be counted! This was the high and law-abiding attitude of democracy in the South, acquiesced in, of course, by its allies in the North.

On the other hand, it assumed an attitude of abject and piteous appeal. While at bugle call it could summon to the field an unauthorized body of at least twenty thousand men, armed, drilled, officered, and equipped, yet its morning and evening plaint was that the heel of the tyrant was upon its breast and the bayonet of the usurper at its throat! All classic literature and the days of knight-errantry have been ransacked for heroic similes to portray the majestic fortitude with which it has borne its wrongs. Why, Mr. Chairman, this dread, this horror of the Federal soldier? I will tell you why. Though there was but one man wearing the Federal blue in a township, he represented the authority, the dignity, the power of the United States. Whoever laid hand upon him touched the mustered-out legions of all the North. Hence men claiming to be brave and even chivalric could go armed and disguised in companies of twenty-five and fifty, and surround the cabin of a defenseless negro in the night-time, drag him from his bed amid the shrieks of his terrified wife and children, and hang him to the nearest tree. But the same men did not choose to molest a Federal soldier. And hence, again, the democratic cry for the reduction of the Army and the withdrawal of the troops, a cry which was never abandoned until legitimate authority surrendered to the menaces of an armed mob!

REPUBLICAN RESPONSIBILITY.

I speak now, sir, of no faction, individual, or administration. A large share of the republican party must bear the responsibility. All who disturbed its unity or impaired its strength must accept their share of the blame. Nor do I speak in any spirit of repining or complaint. It might be, and under God I believe it was, the only method of opening the eyes of the American people to the actual facts of the situation. Men are convinced to-day who would not be convinced before. Conciliation has been tried, tried thoroughly, and in the utmost good faith. The response is before us. Taunt, menace, bitterness, and vituperation are the net result. While these things should not move us they should admonish us that in dealing with the South as well as with the North a firm, steady hand, with authority carefully and justly applied, and when once attempted maintained at all hazards, is best for all parts of the country, and will soonest bring peace to the nation. Sir, we have been reminded, I know not how many times in the course of this debate, that the war closed fourteen years ago; and we have been feelingly appealed to to know why we will persist in reopening these old issues. Who has reopened them, Mr. Chairman? Who brought these issues here? Who is it that will persist in bringing this race and sectional issue to the front on all possible occasions? These laws have stood upon the statute-books for fourteen years. The challenge has been made again and again in both these Houses for our southern friends to show where a Federal soldier has ever interfered with a voter at any poll, and no man has been able to show it. Yet at their demand the Federal troops have been withdrawn; and now comes the proposition that the last barrier for the protection of the ballot-box at Federal elections by United States authority, shall be broken down and cast aside; and if we deign to speak of the facts which have characterized these elections during even the last few years, the cry is raised "Oh! you are reopening the issues of the war! Why do that in this era of good feeling and good-will?" Do gentlemen imagine that the course of affairs in the South has been so gentle, so mild, so child-like that our mouths must be closed forever? Can crime be perpetrated with impunity, and is the ban of condemnation reserved for those only who dare to mention it?

THE DEAD!

Do not gentlemen know that, going back only to the year 1876, the pathway that led to the ballot-boxes in the South is ridged to-day with new-made graves. The green sod has scarcely formed over them. And there the victims sleep; on the banks of the Wichita, among the canebrakes of the Felicianas, and in the ground at Ellenton. The dead cannot complain; the living dare not. Why, sir, the white marble that to-day stands in the spring sunlight over the graves of poor Chisholm, his tender boy and lovely girl, is but a mile-stone on this great highway of crime. And yet, while none of these offenders have been brought to justice, I am not aware that anybody on the other side of this Chamber has ever risen in his place and seriously denounced them. On the contrary, I am aware that the bare mention of some of these things has been received here with hollow laughter.

TROOPS AT THE POLLS.

Sir, I was struck in the early part of this debate with the horror manifested by the distinguished gentleman of South Carolina, [Mr. AIKEN,] at seeing in the year 1868, three Federal soldiers at the polls. We must remember, Mr. Chairman, that the waves of the great war had hardly ceased to roll then, and that readjustment and reconstruction were yet in the future. That I may do the gentleman no injustice let me quote his own words. He said:

In 1868 at the presidential election, for the first time after the war, I was permitted to vote. I went to the polls designing to vote. The house in which the polling took place was a private residence in my own village, about fifty feet from the street. The gate, which opened from the street, was thrown wide open early in the morning, and there paced a sentinel with loaded rifle. When I entered the yard I met another sentinel walking back and forth from the gate to the window, inside of which was the ballot-box, with a loaded rifle on his shoulder. I went to the poll, and the managers from courtesy to me, and friendship, for I knew them well, asked me to come inside the room. I went in; and secreted between the ballot-box and the window sat a United States officer in full uniform. I remained but a moment, and retired. The managers asked me, "Don't you intend to vote?" I said: "No; no freeman will ever cast a ballot under duress; and for that reason I refuse to vote." There was no intimidation about it.

How our friend discovered that those two rifles were loaded, I will not stop to inquire, but whether loaded or not it seems he passed the sentinels who bore them, in safety and without the slightest molestation. He pressed forward to the ballot-box apparently with his intention to vote unchanged; but there he saw a "United States officer in full uniform." This, Mr. Chairman, must have been the last "feather that broke the camel's back," and the gentleman declined to vote. Why? Because the presence of these men was offensive, and he would not vote. This was his right, and I do not refer to the incident for any purpose of criticism, but simply to compare it with certain other election scenes of more recent date in South Carolina, scenes which were enacted after—as we have so often been reminded here—"the passions engendered by the war had cooled."

ARMED MEN AT THE POLLS.

Before the committee of the Senate authorized to investigate the election of 1876 in South Carolina, of which Mr. CAMERON, of my own State, was chairman, the following condition of affairs was disclosed by sworn and reliable testimony. I can cite but a few brief extracts. To give one-tenth of the actual occurrences would fill a volume instead of a speech. As to the election in Edgefield County, Mr. J. A. Beattie, a deputy United States marshal, was sworn and examined as a witness, and after stating that he was at Edgefield court-house on the 7th of November, the day of election, that after the polls were open he visited box No. 1 at the court-house and saw a crowd of white men on the portico and steps, and asked Dr. Jennings and General BUTLER why no more colored men were allowed to vote, and was told by them that the white men had got the start of the negroes and would not yield until they had finished voting, and after being assured by General Brannon that Generals BUTLER and Gary had assured him that the whites would be through voting by ten o'clock, and that then the colored people would have an opportunity to vote he, the witness, visited box No. 2, at Macedonia church, in company with the United States commissioner, and says:

When we neared there I noticed some three hundred or four hundred mounted men.

Question. Armed men?

Answer. Yes, sir; they were in front of the entrance to the church—that is where voters had to pass in—and also around the window where they had to pass out. The commissioner and myself made our way through the crowd and passed in after some difficulty. When we got into the room I noticed several white parties voting; after they had voted and passed out there were several other whites entered. That occurred, I think, two or three times. They entered and voted without any trouble whatever. They were then running short of white men to vote, and some colored men attempted to enter the church, but they were jammed up against the church.

Q. By whom?

A. By these white men. Some were struck over the head by bludgeons or some such things as that in the hands of the whites. I called upon Mr. Sheppard, the supervisor, whom I saw out there, to use his influence and try to have the parties back their horses out so that the colored men could vote.

By Mr. CHRISTIANCY:

Q. He was the democratic supervisor?

A. Yes, sir; he made three or four opportunities to have them take their horses back and get them to back out of the way. They had the heads of them run together so that no parties could get in. There were several colored men got in by forcing their way through the best they could between the horses; some of them run under the horses, but whenever they could they kept them back.

By Mr. CAMERON:

Q. Were those mounted white men armed?

A. They had from one to four pistols buckled around them. Several men got in in that way, by forcing themselves through and being struck over the head. I then announced that unless there were some steps taken to get them in I would be certain to call upon the military and get a sufficient number of men to open the way.

* * * * * * *

At about fifteen minutes to ten the troops arrived. I immediately waited upon Major Kellogg and stated the condition of things to him, and he sent a squad of men, under the command of Lieutenant Hoyt, to the poll. He had to make his entrance into the building through the window where the voters were passing out. As soon as he saw the true condition of things he prepared his men and placed them at the entrance and opened the way to the poll after some little difficulty. There were then ten colored men allowed to pass through at a time between the soldiers and vote.

* * * * * * *

They voted very slowly. Very many useless questions were asked, such as whether they had repeated that day, and whether they had not been convicted of crimes, &c.

* * * * * * *

I think at twelve o'clock I received a message from Senator Cain, saying that the court-house was blockaded so that the colored people could not vote. I received that message from Mr. Cain in person.

The witness says he addressed a note to General Brannon, and then says:

I heard no more of that until, I think, half past four o'clock in the afternoon, when I received another message from Cain that the way to the court-house was blockaded and no colored men were voting. I immediately left the church and proceeded to the court-house. Upon arriving there, I found the same crowd that I had seen in the morning. The bottom of the stone steps to the portico were crowded in the same way that I had seen in the morning.

Q. Crowded with whom?

A. The same white parties that I saw in the morning. It was crowded so that no one hardly could get up.

By Mr. CHRISTIANCY:

Q. Were there armed men on horseback there?

A. All the men, I suppose, were not on horseback; of course a great many were armed and a great many were on foot, at least in front of the court-house.

* * * * * * *

I immediately went to Senator Cain and got six colored men, and started back and came around the street, and when they saw me coming they commenced hollering, "There comes the United States marshal, let him through." I passed through with six men into the court-house.

I had some difficulty in passing up. There was just sufficient room for me to pass up, and they followed me right behind. There were some three men followed me up afterward, and one came up into the court-house. There was no one voting in the court-house. I found Major Kline in there. Those six men voted after some trouble. It was then about time that the box should be closed.

* * * * * * *

Q. What was the condition of the town on the day and evening of the election as to quiet or disorder?

A. Well, sir, the town as a general thing was always in some kind of confusion. There were parties riding through, yelling, shouting, &c.

The witness, on being asked how it was the day after the election, said:

Well, sir, there was a large crowd of armed parties, dressed in red shirts, mounted, who rode around the streets, yelling and screaming, and, as a general thing, knocking in the windows of republicans. Senator Cain's house, I believe, was pretty badly smashed.

Jacob Kline, captain of the United States Army, (major by brevet,) being sworn, describes the rifle clubs, as follows:

The next time was at a democratic meeting, and I saw the rifle clubs, or, at least, clubs mounted, who moved by command, and had their chief officer in command.

By Mr. CHRISTIANCY:

Question. He gave orders like military orders?
Answer. Yes, sir; and have paraded in regular military organization by clubs, and were armed with pistols.
Q. Were they on horseback?
A. On horseback; yes, sir.
Q. About how many did you see that time?
A. I did not count them myself. One of my officers counted them, and he counted seven hundred in the procession. The next time was at a meeting on the 14th October. When the republicans held their meetings there, the rifle clubs paraded. At that time there were six hundred and seventy-five mounted men in the procession. The next time after that was the 18th October, I believe, at the democratic meeting. On these occasions the rifle clubs were mounted and armed, and moved by command.

He thus describes the scene at Macedonia church:

I was directed by the commanding officer, General Brannan, about 6.30 a. m., to proceed to poll-box No. 2, at Macedonia church, Edgefield Court House. I went there, and found probably forty or fifty mounted men.
Q. Were they armed?
A. Yes, sir.
Q. What time in the morning was that?
A. About 6.30 I think it was when I left the hotel. It took me probably twenty minutes to walk out there. My official report would show that.
Q. Describe the course of things there.
A. I found these men had formed a circle, the right of the circle resting at the door opening into the school-house or church where the poll-box was kept, and the left of the circle resting at the opening where the voters came out after having voted.
Q. Was it a window?
A. A sort of a window, yes, sir. As I approached this circle one of the horsemen called out to another horseman to back out there and let Major Kline pass in through the opening. I went up the steps, rapped against the door. A door-keeper was there, and I asked for admission; and he opened the door and I went in.

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I was not called upon by the commanding officer again until three or half past three o'clock that afternoon, when I was directed to proceed to poll-box No. 1, which was at the court-house. The poll-box was in the court-room, access to which was gained by fifteen or twenty steps. I found eight or ten horsemen with their horses' tails backed up against it, facing outward, and the steps were filled with men.

Dick Luney, a colored witness, thus describes the treatment of colored voters at Edgefield Court House:

On the morning of the election, sir, we went around to Colonel Cain's and he gave us a ticket, and we went back up in the court-house to them steps, and we were attacked by the white people, and told that we should not vote there. Some of them had double-barreled guns and some had sixteen-shooters, and we didn't know what to do then. We all went on back and stood about there in the streets awhile, and about ten o'clock in the day we went up to the school-house, about half a mile from the court-house, and we could not get a chance to vote there until nearly night. Some of them voted, but the most majority of them didn't vote at all, and Mr. Swearingen was among them with sticks and things beating them over the head, and they had to run off and could not vote.

It should be noted here that by the laws of South Carolina voters have the right to vote at either of these polls. Tom Brown, another colored witness, thus describes his experience:

Question. Where do you live?
Answer. In Edgefield.
Q. It was when they had an election there last fall, on the 7th of November?
A. Yes, sir.
Q. Did you go to the polls there, or either poll, and try to vote?
A. Yes, sir; I went to try to vote, but I never did vote.
Q. State what was the reason and what happened when you tried to vote?
A. Well, if you want the truth I tries to tell the truth. When we come up to go to the polls the horses were standing on each side of the school-house at the door, and when we come down the road they hollers and spurs up their horses and runs across the road, and there was a lane between us and the school-house, and the horses was on one side of the school-house and they had to go down the lane to get to the school-house; and the other men was with their horses, and ran across the road to get on each side so we could not pass to go to the ballot-box; and they hollered, "Close up and charge." And when they hollered that, they inclined to run over us, and I turned to get out of the way of their horses, but as I turned they struck me over the head.
Q. With what?
A. With a stick, a big, four-edged stick, and cut my head, and here is the marks now to show for itself. [Exhibiting his head.] My shirt was full of blood and it pains me in my neck now.
Q. What did you do then?
A. I just turned and went off and held my head down.
Q. The blood was running then?
A. The blood was running then, yes, sir; and one of the officers took me off and said it was a shame, and carried me and showed me to the rest of them and said it was a shame, and the blood was on my collar and I could reach my hand round and catch it so. [Clasping his fingers together as if to grasp a handful of blood.]
Q. What was their talk at that time?
A. They said, "Oh, God damn it, we works this thing; we carries this thing on; you all been having these things into your hands all this time, but, God damn it; we carries this thing on now." That is what they said to me; I heard them say it.
Q. Were there any others driven away besides yourself?
A. Well, there was, I reckon, as near as I can come at it, about two hundred of us in the crowd at that time.
Q. What did your crowd do?
A. Some of them ran and some of them stood and some fell over the fence, and Mr. Cain told them to go up to the court-house and see if they couldn't vote there. He told us that three times, and we went three times, and we came back and couldn't vote.

This, sir, is the fair, full, and free elections which the democratic heart yearns for to-day. For this, the Army should be disbanded, the courts starved, the wheels of Government blocked. These are the grievances which must be removed, or no supplies can be voted. For this the President's prerogative must be wrenched from him or revolution shall be inaugurated. Grant these things, or as one distinguished democrat has said, we will remain here until these walls crumble into dust! "Oh, dinna ye hear the slogan?"

FREE ELECTIONS UNDER "HOME RULE."

But, Mr. Chairman, perhaps I have forgotten that these things occurred in the days of bayonet rule, before the troops had been withdrawn, before reconciliation had been fairly tried, and before South Carolina and her sister Southern States had been put upon their high and sacred honor! Let us then close the volume of 1876 and open that of 1878. Now local self-government and home rule reign supreme! Another committee of the United States Senate, of which Mr. TELLER was chairman, have been authorized to tell the story. The sketch I make from their report must be very brief, but let us select and weigh the testimony as we would in a court of justice. First, let us take the sworn testimony of Hon. James B. Campbell, a distinguished democratic lawyer of Charleston, whose veracity no one pretends to doubt, and whose high-standing and character all vouch for; a life-long democrat, but too honorable to be a party to a bald-faced fraud. He was a democratic State senator in 1877 in South Carolina and thus describes the preparation there made for what was to follow in 1878. He says, speaking of the democrats in the Legislature:

They reduced the number of precincts so that the voters (most of them poor and having to walk) would, in many instances, have to go twenty or forty miles to get to the polls. In my own county there was a very flagrant instance of that near Charleston, in one of the divisions of the county formerly known as Saint Andrew's Parish, which consisted of mainland and James Island, that is opposite Charleston. There were six precincts in the parish; they reduced them to one. They left one voting precinct on James Island, at Dill's Bluff, where there had been less votes taken than at any other of the precincts, showing that it was not populated very much and could not be easily approached. Well, I denounced this in the senate when I discovered it—I discovered it accidentally—and they immediately restored every one of the precincts on my motion without any opposition; nobody said a word. A day or two afterward the bill came back from the house with these amendments rejected, and then it appeared that it was a part of the machinery. General Gary, representing the democratic committee at Charleston, appeared before the senate and announced that they desired to have the bill passed, whereupon they did pass it. I said I would go before the community and denounce the fraud, and I did that. General Gary said he did it at the instance of the chairman of the democratic committee of Charleston, a member of the house of representatives.
Q. Was that Mr. Buist?
A. Yes, sir.
Q. Did you hear any discussion in the house on the bill?
A. No, sir.
Q. Do you know what reasons were given there for its support?
A. I knew what reasons were given in the senate, and Mr. Buist stated them to me in person, saying that if they would pass that bill and Governor HAMPTON would appoint men as commissioners that they would name, that they would carry Charleston County. That was the reason.

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Q. How is Dill's Bluff with reference to the approaches?
A. It is cut off by Wappoo Cut, a navigable stream, and I think there is no ferry or bridge over it.

Hon. E. W. Mackey, testifying on the same subject, says:

I have a map of Charleston County, which will show the location of the polls in that county. We will take, for instance, what is known as Christ church parish. Under the act of 1875 there was a polling place at Mount Pleasant; then there was another at the Four-mile church, which was four miles from Mount Pleasant. Farther up, on the same road, there was a polling place also, at Wappetaw church, which is fifteen miles from Mount Pleasant, or eleven miles from the Four-mile church. Then, continuing up the same road, there was a polling place at the Thirty-second-mile House, in Saint James Santee, which is seventeen miles from the Wappetaw poll. About eight miles farther on there was another polling place called Board church. When the democrats got into power by the act of 1878 they abolished all the voting precincts between Mount Pleasant and the Thirty second-mile House, and left that whole stretch of country, a distance of thirty-two miles, without a single polling place. They abolished the two intermediate polling places. Then they established at Moultrieville, less than a mile, another voting place, where there is a large democratic majority. This new poll was sure to give a democratic majority, while the other polling places abolished used to give large republican majorities. Again, after leaving the city of Charleston, as you go out of the city on the State road which runs through Saint James Goose Creek parish, there was a polling place four miles from the city of Charleston; and another at Whaley's church, about twelve miles from Charleston; then another at Summerville, twenty-two miles from Charleston. Now, the act of 1878 abolished all these polling places, and established a precinct twenty-two miles from Charleston. There was also a poll at Mount Holly, and that was abolished. They abolished in the parish of Saint James Goose Creek all the polls between the city of Charleston and the Twenty-second-mile House.
Q. How many is that?
A. That is four. All of those were large republican polls. In the upper part of Saint James Goose Creek they allowed the two polling places to remain—Hickory Bend and Cross-Roads, because there was a large democratic vote in that section, and in addition to those two established another within a few miles.

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At Rushland, which is near the city of Charleston, and around which a large majority of the colored people on the island live, the poll was abolished. About six hundred colored voters live at that end of the island. Campbell's church poll, which is in the center of the island, was abolished also. The poll at Andell's store, which is at the extreme end of the island, and at which a very small vote is cast—not more than one-sixth of the vote of the island—was the only poll left on that island, so that the large number of people at Rushland had to make a round journey of forty miles to vote.

Now, sir, can anybody seriously deny that such an arrangement as that deliberately entered into is not such a denial of the right of suffrage by a State as would reduce its basis of representation as contemplated in the fourteenth amendment of the Constitution?

Mr. Mackey also testifies as to tissue ballots as follows:

At the Palmetto engine I examined that poll-list; Mr. Eaton examined it also. Mr. Eaton has testified that the number of persons voting at that poll was 3,569, while in 1876 it was only 738, total number. The total number in 1875 was only 515. Now it is true that another poll in that ward has been recently abolished.
Question. What was the vote at that other poll?
Answer. In 1876 it was 563; add that to the 738 that was voted at the Palmetto engine-house in 1876, and the result will be 1,301. In 1875 the vote was 375 at the poll that was abolished, and 515 at the Palmetto engine-house; added together the result would be 894. Now, the whole vote of the city of Charleston at this election, including the 865 votes that were cast at the Washington engine-house, where the ballot-box was destroyed and was not counted, was 15,542.
Q. What has it been heretofore?
A. In 1876 it was 12,333. In 1875, at the municipal election, the vote was 10,236, the total of the city. In 1874 the total was 10,531; in 1873 the total vote was 12,097; in 1871 it was 10,395. So that the vote of 1878 exceeded that of 1875 by 5,147; in

exceeded that of 1873 by 3,445; it exceeded that of 1874 by 5,011; it exceeded that of 1876 by 3,209. Now at the only two polls in the city where the tissue ballots were not used, the republicans carried; at all other polls where the tissue ballots were used, the democrats carried.

Mr. R. M. Wallace, United States supervisor, thus testifies:

Question. Had you any conversation with any parties, democrats, during the day about the use of these tissue ballots?

Answer. I had not.

Q. Did you have any conversation with any parties, democrats, afterward in reference to their being used?

A. I had frequent conversations in relation to the matter after the election. They regarded it generally as a huge joke which they had perpetrated on the republicans. They did not pretend to deny the fraud.

He further says:

During the day, after dinner—after twelve o'clock—a man came to me whom I knew to be an active and prominent democrat. He said to me then that he was a democrat, but that he was a friend of Mr. Campbell. I had long known him to be a democrat of the most straight-out sect. He had been very active, and had done all he could to break down the republican party, but he was in favor of honesty and fair dealing. He was also, as I have said, a friend of Mr. Campbell's, and desired his election. "And now," said he to me, indignantly, "they are stuffing the ballot-boxes all over town." * * * He told me also that a plan had been agreed upon to seize and destroy the poll list at the Washington engine-house. The reason of that was because it had been too closely scrutinized by the officers who went there to allow any of those tissue tickets to be put in. The result was that there would no doubt be a large republican majority at that poll, and therefore the democrats had determined to destroy it.

Q. Was the box destroyed?

A. It was destroyed.

The committee's report thus describes the manner in which the count was conducted and this box destroyed:

At Washington engine-house precinct, in ward 6, Charleston City, the voting proceeded quietly all day. Walter Elfe was the republican supervisor and R. M. Wilson the democratic. At this polling place there is every reason to believe that there was a large republican majority. The count was commenced, there being in the room three republicans and from thirty to forty democrats. After a short time the gas went out. Candles were obtained and the count continued a short time longer, when the candles were put out. In the darkness that followed the ballot-box was broken up and the ballots destroyed. The number of votes cast was 865. No return was ever made from this box.

I have not time to quote the evidence showing the violence and tumult at the Palmetto engine poll and other places, or that when colored voters who found it impossible to reach certain polling places by water came to Charleston to vote, as they had a right to, were rejected at one poll and sent to another, and then when they had passed the first were charged with repeating because they had been at the other poll; and when told to go before a justice of the peace or trial justice to make affidavit of the fact or of their residences, found the offices of these magistrates locked, the incumbents all happening to belong to the democratic party!

Such, Mr. Chairman, are the outlines of a fair and free election in the city of Charleston, when there are no two United States soldiers with loaded rifles and no United States officer in uniform to molest or make afraid! But this was in a large city, where some irregularities might be expected. Let us now go down into Sumter County and see how campaigns are conducted in the peaceful rural districts:

JAMES B. WITHERSPOON sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?

Answer. At Sumter.

Q. How long have you resided there?

A. For fifty-one years.

Q. What is your business?

A. I am a practicing physician.

Q. What are your politics?

A. I am a democrat.

Q. Were you there in Sumter County during the last campaign?

A. Yes, sir; all the time.

Q. Did you take any part in the campaign?

A. No, sir; except simply to vote.

Q. Did you attend any democratic meetings?

A. I went to one, sir. They proposed to consider me a member of the club, but I retired.

Q. Why did you retire?

A. I thought they would go to extremes, sir.

Q. State what was said and done.

A. They said they were determined to carry the election at all hazards. I could not indorse that, and retired. I withdrew from the democratic club because they proposed to enter upon a course of intimidation and violence, of which I could not approve.

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Q. That was a feature of democracy that you did not believe in?

A. No, sir; I did not believe in it at all, sir.

Q. Did you see any demonstration made in pursuance of this plan?

A. When the republicans had appointed a meeting to be held there I heard the firing of cannon from twelve o'clock midnight until nearly daylight from the academy grounds; then, in the morning, the firing continued until they began to assemble. Then a large parade of infantry and cavalry came into the town well armed. A procession of colored people on their way to their place of meeting was headed off by the democratic cavalry, and for a long time they could not get to the place where their meeting was appointed. When the meeting was in progress they seized Mr. Coghlan and took him onto the platform of the court-house and threatened him a great deal. I didn't see him struck, but I did see him struck at and tortured a good deal and jerked from side to side while they were trying to put a red shirt on him. There were a great many of us who would have been glad to rush up to his rescue but from the fact that there was a semicircle of cavalrymen, well armed, surrounding him so that we could not get up there at all.

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Q. Did you see any cannon there that day?

A. Yes, sir.

Q. Was it loaded?

A. I don't know; it was charged with gunpowder, and I heard say it was also charged with nails.

Q. When was it said to have been charged with nails?

A. They said it was charged with nails before it was brought up to the rear of the colored people at the court-house.

Now let a republican speak:

Samuel Lee (colored) sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?

Answer. In Sumter County.

Q. How long have you resided there?

A. All my life.

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In the opening of the campaign quite an effort was made on the part of the leaders of the democratic party to prevent any organization whatever of the republican party.

Q. What were those efforts?

A. The first effort that I discovered in that direction was from a street conversation between a prominent democrat, the adjutant inspector of the State, E. W. Moise, and the editor of the Sumter Watchman, Mr. Dargan. I was passing along the street when my attention was attracted to a conversation between these two men; quite a heated conversation, in which both were very much excited. Mr. Dargan took the position that the republican party should be entirely crushed out in the county, and if any one of the leaders of the party moved he should be put out of the way. Mr. Moise took the position that this was very unwise; that the republican party should be recognized; that a committee should be appointed from the democratic party to wait upon the leaders of the republican party, and propose to them to have one ticket in the county; and that the republican party should be represented upon that ticket. He said he believed that only in that way could they have a fair and peaceable election. Dargan excitedly charged Moise with being a republican in disguise, and said that he and the rest of the democrats would see that Moise's schemes should not be carried out. Moise took offense at that, and they had some very heated words. Dargan told Moise that he and the white people intended to carry that county for the democracy at any cost whatever.

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On the 31st of August we called a meeting at Rafting Creek to reorganize the republican party of the county. Stewart and others were to address the meeting, and Coghlan and myself went over from Sumter to speak. When we got a little piece from town we were informed that quite a number of armed white men—democrats—had gone ahead of us. We had heard that there would be a meeting at Providence, between Raftin Creek and Sumter, and I said I supposed they were going to hold a meeting. We went to Raftin Creek, and met at a colored church called "Good Hope." We had to turn a bend, and as we were turning the bend we came to the church. As we came around the bend we were greeted with yells and groans by the white men assembled; and the first that we knew, we were surrounded immediately by a large number of men, some two hundred. We looked to see if there were any colored men there, and we saw a few over in one portion of the crowd. We drove up where they were to unhitch our horses, and while we were doing so I noticed Mr. Earle and Mr. Dargan, who were "aids" on Governor HAMPTON'S staff, which surprised me, as the governor had promised to help us put down any disturbance.

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I told them that as soon as the republicans got there we proposed to hold a meeting, but that we did not see enough republicans there at present to hold a meeting. They said we had called a meeting and we should not back out. Those were Mr. Earle's words. He said if the meeting was not called to order in one hour's time, he would take me and Coghlan prisoners and carry us back to Sumter. I said, "What is your object in doing that?" He said, "No matter what is the object, we will do it; and the less you say here the better it will be for you." By that time a crowd gathered there and said, "Shoot him now," and I heard all kinds of threats. I refused to call a meeting to order, and he took out his watch and said, "If you don't call it to order in one hour's time, you will be taken prisoner." Well, the hour passed, and I did not call it to order. Earle called the democrats and said to them that the hour had passed, and Lee had failed to call the meeting to order; and he wanted to know if his determination should be carried out, and the crowd yelled, "Yes, yes, carry him out!" He came to me and said I would have to go to Sumter. I told him I would not go unless they carried me, and they said they would carry me. Just then a democrat who was under the influence of whisky jumped up in the wagon and said, "I call the meeting to order." He made some remarks in which he said a day had come in which radicalism had died in Sumter County and that was the funeral, and he did not want Mr. Lee to leave there until the entire ceremony had been finished.

He then relates that other democrats addressed the meeting, among them, Dargin, and says:

As soon as he commenced I tried to get off the wagon quietly, but he saw me, and demanded that I should stay there. I said, "No; not while you are pointing your finger in my face." Then he knocked me down, and others ran in and helped to choke me. They took me off bodily and carried me off. They took me to a dark, thick piece of woods, and several times while going through the woods they stopped and held consultations as to what should be done with me; and they came to me and asked me if I was ready to decide never to call another republican meeting in that county. I said, "No, I am not ready." They asked me if I was ready to sacrifice my life for the republican party, if life was so sweet to me as that; and they told me to choose.

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They said they would take me to the court-house steps and give me these instructions publicly; that I should quietly ride in that buggy up to the court-house steps; and that if I opened my mouth I should be shot immediately.

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When we got within one square of the court-house we were within one square of my house. Then I jumped out of the buggy and ran toward my house. They turned their horses and ran them over me, and tripped me down, and jumped off their horses with their drawn pistols and took hold of me. Then I resisted, and said they had no right to take me, and I would not go to the court-house. I said that I had no business there, and would not go. There was quite a disturbance. I recognized the chief of police near us, and appealed to him to protect me as a citizen of the town, saying that these men had unlawfully taken me prisoner, and I called upon him to protect me. As he came in the crowd he was knocked back by Mr. Earle, who said that it was not a police matter.

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In the mean time my wife and sister ran there and commenced screaming, and quite a number of colored men ran in to protect me. * * * The men attacked all the colored men that were in the crowd who had attempted to rescue me.

He says they finally took him to the court-house steps. Dargan and Earle made speeches saying that they had captured him out at a meeting, and had brought him in alive, but would not do so if they caught him out again. And then—

ALLOWED HIM TO GO HOME!

Judge Lee thus describes the republican meeting held at Sumter, October 12, already alluded to by the witness Witherspoon:

From two o'clock that night the town commenced to be crowded with mounted men—democrats—and every available stable, field, and lot in town were crowded.

The next morning could be seen armed men of all descriptions, and the red-shirts. Two brass pieces were brought from Columbia, with the men belonging to them, that is, the artillerymen.

The democrats had also called their meeting. I think we had intended to call our meeting on the academy green, and the democrats supposed it would be called there, and therefore they had published to hold their meeting there. But when we decided to go to the colored church instead of holding our meeting on the academy green, they followed the republicans down with their brass band and field-pieces and went down to the depot. They stopped there. The republicans continued on and went to their stand and organized their meeting; and these democrats commenced shooting right over in that direction, elevating their guns, and firing over from there, and they kept it up. They held a meeting there, and it was not satisfactory. We expected Congressman Rainey and other distinguished speakers. They failed to come; on account of the intimidation that was shown, they decided to go back to town. The procession was reformed and they went back to town. When they got back to where these democrats were at the depot, a detachment got in front of them and said they must go to the democratic meeting and hear the democratic speakers. They refused to do it, and there was quite an excitement right there, and the question was whether the republicans should be allowed to go down town or whether they should be compelled to go to the democratic meeting. They finally allowed them to go down town. Immediately on getting straight, the democratic horsemen galloped across the streets where the procession would have to pass. The republicans attempted to force their way through, and that was the signal for another disturbance there. Mr. Coghlan and Spears went to the court-house steps and called for the republicans there, and immediately the democrats ordered Coghlan down, and commenced threatening him. He persisted in speaking, and the town bell was rung as an alarm. I have found out since that it was a prearranged matter that the town bell should be struck as an alarm for the democrats to fly to arms. The town bell was struck, and immediately the brass pieces were rushed down to Main street, loaded with ten-penny nails, and were so arranged as to sweep the street in the direction in which the republicans were.

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We held a meeting on the Saturday previous to the day of election. The election was held on Tuesday, and that meeting was not disturbed. Mr. Dargan said in my presence that they did not intend to disturb the meeting any more, and that they had agreed upon another plan, and if we only knew what their plan was it would be useless for us to hold any meeting. Well, the night of election we learned it was their purpose to use tissue ballots, as they did not succeed in intimidating the colored people as much as they thought they could; and they found out that instead of intimidating them they only united them the more.

CAPABILITIES OF THE NEGRO.

Mr. Chairman, reflect upon this narrative for a moment. This is the language off-hand of a colored man taken down by a phonographic reporter just as it was uttered. What does it import? How sagely we at the North can converse about the capabilities of the black man and wonder if it was wise to admit so much crude material to all the benefits of the elective franchise at once. Why, sir, where this side of Plymouth Rock has more intelligence, bravery, fortitude, or fidelity to principle been shown or better judgment exercised than by these same poor hunted, hounded, persecuted people of the South?

OTHER OUTRAGES.

I have no time to trace the same things through the county of Williamsburgh and other counties of South Carolina, where prominent republicans like Mr. Swails, now a refugee in this city, were arrested by armed mobs on the public highways and forced at the muzzle of revolvers to leave their homes, property, wives, and children, and flee for their lives; where United States officers were arrested upon false charges and dragged to prison; where bands of armed men appeared at the polling places and carried matters with a high hand; where guns were fired and graves were dug on the night of election, and men inquired for at their houses with the avowed purpose of having a funeral! Let it not be said that the wild and the ruffianly only were engaged in these things. The testimony shows that members of the local democratic executive committees and prominent lawyers and doctors and editors were directly engaged in them. True, in isolated cases, prominent democrats were disgusted, like Mr. Moise, of Sumter, who, when Mr. Butler Spear came to him and said, "Mr. Moise, is this the way to get democratic votes?" answered and said:

No, sir; that is not the way to get democratic votes. I was very indignant; I didn't approve of that sort of thing.

But while men have arisen here to disown these things, what man on that side of the Chamber has risen to denounce them? Sir, after this recital, after this perfect saturnalia of fraud, violence, and tumult, I know of no finer bit of irony than that contained in the following extract from a speech delivered by Governor WADE HAMPTON at Barnwell, July 4, and published in the Charleston News and Courier July 8, 1878. He said:

If it is thought that we can be successful in this election by fraud—and I have heard some rumors floating through the State occasionally intimating that we have the machinery of elections in our own hands, and that we could count in anybody we pleased—I tell you, people of Barnwell, and people of South Carolina, that if you once countenance fraud, before many years pass over your heads you will not be worth saving, and will not be worthy of the State you live in. Fraud cannot be successful, because the chosen sons of South Carolina form the returning board now. The men placed there as representing the truth and honor of South Carolina would die before they would perjure themselves by placing men wrongfully in office.

But let not all the blame be cast on the Palmetto State. Louisiana and others, if they had less tissue ballots, had more violence and bloodshed. I have no time to trace these, nor is it necessary. The committee in one paragraph of its report has summed up all as to Louisiana as follows:

SUMMARY OF MURDERS AND VIOLENCE.

The examination of the committee, it will be seen, was confined to but seven of the fifty-two parishes of Louisiana. In these seven parishes the evidence shows there were murdered "for political purposes" during the campaign of 1878, John Williams, (page 45;) Robert Williams, (44, 57, 186, 192, 236, 347, 470;) Luke Wiggins, (44, 48;) Lot Clarke, (46, 58, 62;) Billy White, (46, 48, 62;) Greene Abrams, (49;) Josiah Thomas, (50;) Charles Bethel, (192, 236, 337, 347, 561;) William Singleton, (178, 191, 348;) Monday Hill, (186, 192, 236, 347, 469;) Louis Posthelwaite, (186, 347;) Richard Miller, (192, 236, 347;) James Starver, (192, 347, 473;) Commodore Smallwood, (236, 348, 355;) Charlie Carroll, (236, 355;) John Higgins, (278, 348;) "Doc." Smith, (347, 355, 359;) William Hunter, (348;) Hyams Wilson, (348, 355;) Wash Ellis, (348;) Asbury Epps, (244, 348;) John Robinson, (355;) Rufus Mills, (416.) Besides these there were fully as many others murdered whose names the committee were unable to ascertain, whose corpses were seen, by witnesses who testified before the committee, hanging on trees or lying dead in the streets or fields. Dozens more were wounded from shots fired at them with murderous intent, some of whom were present as witnesses before the committee exhibiting their scars; others were whipped or beaten and mutilated; wives were tied up by the thumbs and whipped for refusing to tell where their husbands were secreted; scores of leaders in politics among the colored men were driven from their homes, leaving their crops in the fields and their families unprovided for. In brief, a literal "reign of terror" existed, and in fact still exists, over a considerable portion of Louisiana, as the result of the policy adopted by the democracy for perpetuating its rule in that State.

NEGRO EXODUS.

Mr. Chairman, if any man doubts the truth of the above let the grim and silent procession now moving from the banks of the Mississippi toward the North be his answer. It is as though the judgment of God had fallen upon the South at last. War, pestilence, or famine could hardly affect so deeply the currents of her prosperity as this exodus of sturdy laborers, if not speedily checked by the granting of ordinary rights and at least so much protection to life and limb as is accorded to the beasts of the field. Sir, for one I have but little to say on this new phase of the question. Addressing the colored people at my own home in the summer of 1877, I chanced to say then what I can only repeat now, but what I should not stop to repeat but for the fact that it seems about to be verified by actual experiment. It is this:

I am aware we are told that peace now reigns throughout our southern borders such as a quarter of a century has not seen before; and that in the States of Louisiana and South Carolina contentment and thrift are everywhere.

But I cannot forget that following this announcement comes the further fact that the negro, who is so naturally attached to locality and soil that neither whips, nor scourges, nor even slavery itself could drive him away, now for the first time under this benign reign, in the single State of South Carolina to the number of forty thousand, lift their hands to heaven and avow their readiness to take to the open sea and sail away from their native shores forever; and that four thousand have actually put their pens to paper binding themselves to carry out this determination.

* * * * * * *

You have the sympathy and pity of the people. But you need something more than pity. You need that strength which never fails to command respect. How are you to obtain it? The answer lies in a nutshell. Let the colored man stand upon his own acres, let him become the owner of ships and mills and factories, and the prejudice of race and color which impedes his progress will pass away. I sometimes think that the man without a home, however humble, stands next to the "man without a country."

What better qualification for a good citizen than to feel that he has an interest in the community and that he is a part of it? That he stands on his own soil, however limited the area, the air above him reaching up to heaven, the earth beneath him running down to China, and he holding the title deeds to the whole thing? Why, I sometimes think that land is as necessary to the healthy growth of a man as to the life of a tree.

So I would say to your race, instead of taking to ships and sailing away from your native land just when a better manhood is dawning upon you, go out upon its free prairies, or into its beautiful woodlands and become rooted to the soil. I would if I could, revive and thunder in your ears the memorable words of that greatest of black men who ever lived, Toussaint L'Ouverture, he who in the darkest days of San Domingo rose upon the tempest and controlled the storm. He told his countrymen that their only hope was to diligently devote themselves to agriculture and become owners of the soil.

So let forty thousand of your race to-day go out from South Carolina, or from any other Southern State, and under competent leaders and with proper preparation, and settle upon the free lands of the Government, not as an isolated colony, but interspersed where your rights will be respected and your liberties preserved, and my word for it, from that hour, the protection of your fellows and their families in the South is settled without the firing of a gun. Have you not the spirit to do this? Do you not owe it to yourselves and to your posterity? Has not this country poured out its treasures, and shed its blood like water to give you a better manhood? Can it fight your battles forever? Are you content to crawl at the foot that kicks you and forever lick the hand that smites you? If you are, even Anglo-Saxon grit and sympathy must abandon you at last, and you are doomed to die as you were born—slaves! But I draw no such dark picture of your future.

Mr. Chairman, I can but rejoice that the prospect so faintly outlined is now, in strong and able hands, moving onward to success. Ah, sir, I can but believe that in addition to all that eminent men, statesmen, and philanthropists are doing, the hand of God Himself is in it, and that it means a higher and better manhood, a juster distribution of human rights, and, last and best of all, a final and peaceful solution of this southern question which has so long rent and torn our country.

AN APPEAL FOR PEACE.

Gentlemen of the South, you think us moved by a spirit of hate; you think us actuated by selfish motives; you imagine that we seek to keep open these sectional issues for political purposes. You were never more mistaken in your lives. If there is anything the people of the North long for, yearn for, pray for, it is political peace and commercial prosperity. Without fact to stand upon a sectional issue could not live an hour in the North; the people are tired of sectional issues; they want peace, but they love justice. They realize that you suffered in the war as well as they; that your homes were stricken, your fields laid waste, your cities made desolate; they know that in defeat your pride was wounded, and that in all you do you have to contend with the education, the associations, and the surroundings of a life-time; they appreciate your genial ways in social life, and we of the West realize how many interests we hold in common with you. Let this reign of barbarism cease; let social ostracism for political opinion be no more; let the example of your brave Longstreet and your General Key be followed. In short, let all the people of the North see you come one step in dead earnest and they will go ten to meet you, though they tread over a hundred battlefields and a thou-

sand graves, filled with their loved and lost ones! You cannot contend forever; the edicts of nature, the laws of God, the immutable principles of right are stronger than you. A truce to sectional strife: let the rights of all be respected; let the citizen rest in security; let the bow of peace span the heavens, filling the firmament with its radiance and lighting up every home with the joy of its smile. Then, indeed, will our country have needed repose, and—

> No more shall trenching war channel her fields,
> Nor bruise her flowerets with the armed hoofs of hostile forces!

Legislative, etc., appropriation bill.

SPEECH OF HON. THOMAS EWING,

OF OHIO,

IN THE HOUSE OF REPRESENTATIVES,

Friday and Saturday, April 25 and 26, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. EWING said:

Mr. CHAIRMAN: Ought we to repeal the laws which the democratic party in Congress propose to repeal? Has Congress the power, and is it expedient to place the provisions of repeal on appropriation bills? These, and these only, are the legitimate questions for discussion here and now. But instead of confining themselves to a discussion of these questions, the gentlemen on the other side have seized upon these propositions for repeal as a pretext for inaugurating a presidential campaign upon the issues of sectional hate and distrust, hoping thereby to escape trial and condemnation at the bar of public opinion for the vicious legislation for which they so richly deserve to be wholly expelled from power.

These provisions of law we propose to repeal are no part of the war settlement. The clause permitting troops at the polls, and the jurors' test oath clauses are belated remnants of war legislation, but no part of the war settlement; while the supervisors and marshals' code was invented six years after the end of the war by the republican party to protract its hold on power against the will of the people.

Sir, I yield to no man in determination to preserve and perpetuate all the just settlements and results of the war; I would not yield one jot or tittle of them at the demand of any party or section. But as a Union soldier, proud of my service, and unwilling that anything we won should be surrendered, I denounce this legislation as a plague spot upon the body-politic, and I denounce the clamor raised against its repeal as calculated to cheat the people of the North of the great object of their sufferings and sacrifices—a restored, harmonious, and prosperous Union. If I know the feeling and purpose of those with whom I bore arms under the Union flag—of that million of men who, like my colleague, General WARNER, and myself, went from the republican party into the Army, or that other million who, like my colleagues Captain FINLEY and General LE FEVRE, went from the democratic party into it, they did not fight that the North might first subdue and then rule over the South, but only to preserve the Union, "with all the dignity, equality, and rights of the several States unimpaired." [Applause.] Nor did they fight that the party which conducted the war might have an unlimited lease of power either by perpetuating its passions, or by trespassing one inch upon the inherited liberties of the people. [Applause.]

Two short months ago my distinguished colleague from Ohio [Mr. GARFIELD] thrilled this House and the country by the noble declaration that it was time for sectional strife to cease, and that no man could gain position in intelligent public opinion by further protracting it. At the very close of last session he declared his willingness to vote for the clauses prohibiting the use of troops at the polls and repealing the jurors' test oath, as they are now on these very appropriation bills.

Mr. GARFIELD. No, sir.

Mr. EWING. Yes, sir.

Mr. GARFIELD. I do not want to be misunderstood and my colleague I am sure does not want to misrepresent me. I have said repeatedly, and have so said in the course of this debate, that I was willing to repeal the whole law of 1865 that gentlemen on the other side found fault with. But I have never said that I was willing to pass this modification of the law which would make the condition of matters infinitely worse than it was originally.

Mr. EWING. I will quote the gentleman's language. He said:

> I am free to admit for one that these enactments were passed at a period so different from the present that probably we can, without serious harm, muster them out now as we mustered out of service the victorious armies when the war was done. For myself I see no practical serious objection to letting these sections go.

Mr. GARFIELD. The sections of the law of 1865.

Mr. EWING. That meant just what we are proposing to repeal.

Mr. GARFIELD. And if the gentleman will allow me, let me remind him that we introduced on this side at this session a resolution to repeal the two sections of that law, and every republican voted for it and every democrat voted against it.

Mr. EWING. We were differing about three things. The first was the clause that we inserted on the Army appropriation bill. Second, the jurors' test oath. Third, the supervisors and marshals law. Those provisions as to the use of the Army at the polls and as to the test oath were in the appropriation bills of last session in the very words in which they are now in these appropriation bills. And the gentleman from Ohio said:

> I for one am willing to abandon the first of these two differences, to give up the clause in relation to the use of the Army and to give up the jurors' test oath if the other side will abandon the attempt to repeal the election laws.

Mr. GARFIELD. I wish to ask my colleague will he agree to that himself now? If we will give up the first two points, will you give up the other? [Applause on the republican side.]

Mr. EWING. We are not talking about what I will agree to. That is utterly idle. We then differed on three provisions, and you agreed to give up two of them just as we had agreed upon them and put them on the appropriation bills.

Mr. GARFIELD. Are you willing to give up the other?

Mr. EWING. I will talk to you about that at another time. *Then* he was willing to put these clauses on the two appropriation bills. They were all right. But in less than a month a proposition to do the same thing exactly was met by him by the thundering declaration that it was practically a renewal of the civil war by southern democrats, who, having failed to shoot the Government to death, were now resolved to starve it to death.

What is there to justify this renewed and protracted clamor against the South? Nothing, absolutely nothing. The great question about which the North and the South went to war is settled forever, the question of the right of secession. Our forefathers differed about it; they failed to settle it in the Constitution. The southern people believed the right to exist after the Constitution was adopted; the northern people believed it did not exist. Both were sincere; both had eminent authority for their interpretation—Hamilton and Washington on one side, Jefferson and Madison on the other. The first gun fired on Fort Sumter swept the question from the forum to the battle-field, the highest of human arbitraments. There it was irrevocably settled. The South now, without conceding that they were originally wrong or unfaithful to their honest interpretation of the Constitution—which is a concession we have no right to expect or ask—do concede at all times and everywhere, and with almost absolute unanimity, that the question is decided against them, and that from that decision there is and can be no appeal.

The amendments of the Constitution to secure liberty, equal rights of person and property, and franchise to the emancipated slaves; to guarantee the public debt and pensions and bounties to Union soldiers; to prohibit payment for slaves, or for debts or losses incurred in aiding the rebellion, are all accepted and acquiesced in throughout the South. Every security asked by the victors has been yielded honestly by the vanquished. Ten years have passed since the last of the conditions of settlement prescribed by the republican party were fixed in the fundamental law. In that ten years no more constitutional guarantee has been demanded, and no man can say that in this country now, from one end to the other, there is an intelligent being who thinks for one moment of questioning the absolute finality of the settlement. [Applause on the democratic side of the House.]

I do not deny that here and there in the South outrages on the rights of colored men occur. But these wrongs are almost in every instance the inevitable result of the systematic attempt of the republican party to keep up the color line; to array the blacks in hostility to the whites under the lead of white adventurers supported by Federal power, and by a partisan enforcement of this harsh, exasperating, and vicious legislation which we now propose to repeal.

You know, gentlemen of the republican party, that it is idle to expect that the white race of the South or the white race of the North anywhere in any State, county, or city, will submit to negro domination. You know that there is not a city or county in a Northern State in which if the negroes had the numerical majority they could take and hold political power without as much riot, resistance, and political disturbance as have occurred in the most disturbed portions of the South. [Applause on the democratic side of the House.]

Mr. OSCAR TURNER. Yes; and more too.

Mr. EWING. Yes; because there is not that kind feeling toward the blacks in the North that there is in the South. Race antagonism is fiercer and stronger with us, far stronger. You built up your negro and carpet-bag party in the South and propped it with bayonets and marshals, and supervisors and packed juries, knowing perfectly well it must tumble down, and intending to breed discord between whites and blacks and thus keep alive throughout the North the fires of sectional hate and distrust in order that your party could continue to hold that control of the North which you could not maintain on the real living issues of the day. [Great applause from the democratic and greenback members.]

But we are told, Mr. Chairman, that this Federal intervention in the South was necessary to protect the rights of the negroes. I deny it, sir. The whole history of reconstruction since 1869 disproves it.

Federal intervention has been the cause, the one great, lasting cause, of race disturbance there. From the States from which the Federal power was early withdrawn—Virginia, Texas, Georgia, North Carolina—there has come up hardly a complaint of race disturbance from the end of the war until now. The outcry has come from the

States where you kept the Federal arm longest; where you organized most thoroughly your machinery of supervisors and marshals; where you most persistently forced that impracticable and monstrous organization of parties on the color line; where you constantly held over the white race the threat of black rule, under carpet-bag direction, which has always proved a rule of ignorance, profligacy, and vice. [Applause on the democratic side.]

When you take into consideration the natural dominating spirit of our race, no stronger in the South than in the North; when you take further into consideration the fact that the whites in the South own nearly all the property, and that negro and carpet-bag supremacy has always resulted in taxation of property up to the very verge of confiscation, you have conditions that make black domination in any Southern State utterly incompatible with civil order. [Renewed applause.]

Must negro suffrage therefore be abolished? Not at all. But the color line must be abolished. If we want peace we must not have race organization in the South or anywhere. Withdraw from the southern whites this threat of black domination, and they will divide into political parties on local and State and national issues just as do the whites of the North. The colored people will divide also, and be courted for their votes by both parties. The angry antagonisms of the past will not again be revived by struggles for a race supremacy as hurtful to them as it is intolerable to the whites. Their usefulness as the chief prop of the industrial organization of the South and their natural kindness and docility so strikingly displayed throughout the war—and even during the passionate struggles in which they have been the tools of the carpet-baggers and the northern republican party—generally protected them against personal wrongs. Stop that vain and mischievous struggle; leave them and the whites free to form parties on other issues than race supremacy, and the ballot will become to them a badge of dignity and a title to respect which will promote instead of impairing their elevation and happiness.

Why, then, can we not have peace and concord and fraternal union? Simply because the republican party wants to profit still further by the hates and fears engendered by the war. These have been their political capital from the end of the rebellion till now. Aided by them they have carried through without successful question their infamous series of finance measures which have blighted the hopes and fortunes of the masses, white and black, North and South, and have built up a powerful and arrogant money aristocracy to rob the people and rule the Republic.

Mr. Chairman, but for this eagerness of the republican party to inflame again the passions of the war and to use these statutes to defeat the will of the people, there would be no voice raised against their repeal. None of them can be defended as proper to remain permanently in our code. Let us examine them one by one.

TROOPS AT THE POLLS.

The amendment we recently put on the Army appropriation bill was to strike out the words "or to keep the peace at the polls" in the following section of the Revised Statutes:

SEC. 2002. No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.

To which was added the following amendment on motion of the gentleman from Indiana, [Mr. NEW:]

Provided, That nothing contained in this section as now amended shall be held or deemed to abridge or affect the duty or power of the President of the United States, under section 5297 of the Revised Statutes, to enable the United States to comply with section 4 of article 4 of the Constitution of the United States on application of the Legislature or executive, as provided for in said section.

The reason we insist on forbidding the use of troops to "keep the peace at the polls" is twofold:

First. Because such employment of the Federal Army is not warranted by the Constitution. All publicists agree that the General Government has no power on its own motion to use the Army of the United States within any State as a general constabulary force, to keep the peace either at the polls or elsewhere. My colleague [Mr. GARFIELD] says that by striking out the words "or to keep the peace at the polls" we prohibit the use of the troops there, even to suppress resistance to civil officers. That is so, and I grant that if the General Government has the power to send civil officers to the polls in the States to perform duties there it should have the power to employ the Army to suppress resistance to their authority. But I will show in discussing the election law that it has no power under the laws now in force to send a civil officer to the polls in the States to perform any function respecting elections, and therefore it has and should have no power to send its troops to the polls for any purpose.

Second. Such use of the troops is not only unconstitutional, but hostile to the traditions of our people and the safety of republican government. A ballot-box surrounded by bayonets is an abomination and a mockery. It has never before been tolerated by a free people. Prohibited in England for centuries, it was resorted to here, following the example of the bogus republic of Napoleon, as part of the machinery of reconstruction. It belongs to that disgraceful era which the American people will never suffer to return, when the Army was put to the base use of packing and dispersing Legislatures for the benefit of the republican party.

I fear, Mr. Chairman, that the change which seems to have come over the republican leaders, since last session, respecting this provision of repeal is due to the fact that on reflection they have concluded that their party may need the power to use the troops at the polls in the fierce contest of 1880. It may be made very serviceable, not only at the South, but wherever in the North the interest of the republican party may demand it. A great and dangerous power is sure to spread. The supervisors and marshals were at first employed in the South alone—then, in 1876 and 1878, were used over the North. If the people acquiesce in these Federal appliances to control elections, the party in power which first greatly needs their use will not be slow to employ them as widely and generally as its interests may dictate. This unconstitutional and dangerous power ought to be expunged from our statute-books—not to strengthen the democratic, not to weaken the republican party, but to obey the Constitution and vindicate the right of the American people everywhere to a free and unawed ballot.

THE TEST OATH.

Section 820 of the Revised Statutes provides that to have engaged in the war of the rebellion or to have given aid or comfort in any manner to those who were in it shall be ground of disqualification for grand or petit jurors; and section 821 provides that a test oath may, in the discretion of the court, be administered to persons summoned to serve as such jurors, or as veniremen, or talesmen, and any person refusing to take such oath shall be discharged from such service. These provisions were originally enacted in 1862, in the midst of the rebellion, and were repealed by a republican Congress by the act of April 20, 1871, but were through inadvertence re-enacted in the Revised Statutes on the 22d of June, 1874. But as they are well known to have been inserted and enacted in the Revised Statutes by mistake, and as their execution is left to the discretion of the court, they should never be enforced by an upright judge. Yet they are in many districts of the South rigorously applied to exclude almost all the whites from the jury-box of the Federal courts—especially in the numerous political prosecutions now going on under the election law.

Without criticising the expediency of this test oath when enacted in the midst of the struggle for the preservation of the Union, I speak only the sentiment of every fair-minded man, republican and democrat, when I denounce it as being now utterly cruel, unjust, and indefensible. It is merely an instrument of oppression of the white people in the hands of a few miscreants who disgrace the Federal judiciary in some of the Southern States. Its repeal is demanded by a sense of justice and fair play, which the most violent partisanship cannot disregard.

SUPERVISORS AND MARSHALS.

The last of the amendments insisted on by the democratic party is the repeal of the most objectionable features of the election laws of February 28, 1871, and June 10, 1872, now embodied in the Revised Statutes under the title "Elective Franchise." As these laws now stand, they authorize the appointment by the Federal courts of two supervisors of elections at any or all election precincts in the United States, with power to take control, in effect, of every registration and of every election where a member of Congress is to be voted for—to personally scrutinize, count, and canvass every ballot, and, in the absence of the United States marshal, or his general or special deputies, to exercise the power conferred on marshals and their deputies. These laws further authorize the appointment by any United States marshal in any city of twenty thousand inhabitants or upward of any number he sees fit of deputy marshals, to hold not over ten days for each registration and election, at a compensation of $5 a day; and the same pay is allowed the supervisors in such cities. These marshals, and supervisors acting as marshals, have power to arrest and imprison, with or without process, any citizens whom they believe or pretend to believe to be interfering or to have interfered in any manner with their duties, or to have in any way violated the election or registration laws.

The democracy insist on the repeal of all of this partisan scheme, except that part which authorizes the employment of supervisors; and it proposes to take from *them* all power except to be present at and inspect as witnesses the election proceedings, including the reception of ballots, the count, and the return.

These provisions of the election laws now sought to be repealed, whether constitutional or not, are in violation of immemorial usage, insulting to the people, and dangerous to popular liberty. Article 1, section 3, of the Constitution provides that—

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

It appears by the history of the debate on the Federal Constitution that, until near the final adoption of the Constitution, that clause gave Congress only the power to alter State regulations; and that power was resisted strongly and was conceded only on the ground that the States might fix bad times for the choice of Representatives; so that by choosing Representatives after the time when one Congress had expired they might be unrepresented in a called session of the next Congress, as is the case now with California. For that, and for other kindred reasons, Congress was given power to *alter* State regulations.

Then, almost at the close of the labors of the convention, the words

"make or" were inserted—to "make or alter such regulations." Mr. Madison says, as to the addition of the word "*make:*"

This was meant to give the National Legislature the power not only to alter the provisions of the State but to *make* regulations in case the State should fail or refuse altogether.

So jealous were the people of Federal interference in the election of Congressmen that from 1789 to 1841 Congress never touched the subject. It then passed a law providing that Representatives should be elected by single districts instead of *in solido* by the States. That law was so unpopular that several States refused altogether to obey it, and the next Congress admitted Representatives elected on a general ticket, disregarding the law altogether and refusing to admit the men who were elected strictly under it. The power was thenceforth left unexercised until 1871 and 1872.

Now, I cannot quite concur with the most of my colleagues in respect of the true interpretation of this constitutional provision. I think it gives Congress the power, if it chooses to exercise it, not only to alter State regulations, but to take this whole subject of the manner of conducting elections of Representatives under its exclusive control—making such regulations as it sees fit and executing them through officers appointed by and responsible to the Federal Government alone.

But a distinction must be kept in view between *making* and *executing* the laws governing the process of congressional elections. The State has the constitutional power to make such laws, and Congress the power to intervene and alter or supplant them by a code of its own. But in executing such laws, whether they be all made by the State or all by the General Government, or part by one government and part by the other, there can, in the very nature of things, be no divided empire. One or the other government must have absolute and exclusive control of all the instrumentalities of these elections. We have here two sovereigns: the General Government with powers limited by a grant; the State government with all powers not granted to the General Government or reserved by its own people. Both are equally sovereign within their respective spheres. Both cannot occupy the same spot and control or supervise the same officers in the performance of the same duties. And when one appoints officers to do acts which it has a right to have done, the other, *ex necessitate rei*, is an intruder if it attempt to inspect or direct the acts of that sovereign or of its officers.

The vice of this legislation which we propose to repeal is that it leaves all the State registration and election officers to execute the whole code of regulations for conducting the elections, and yet sets over them Federal supervisors to inspect and direct them in performing their duties. I say this exercise of power is utterly unconstitutional. If the Federal supervisor can lawfully be sent to perform duties respecting such elections, then it follows that he is entitled to the support of the civil and, if need be, the military power of the United States, should he be interfered with or resisted in the execution of his duties. You would have then this situation: United States supervisors go to the polls to inspect, direct, and control State officers; the State officers are entitled to State peace officers and *posses* to resist any unlawful interference with them; the Federal officers are entitled to marshals and *posses* to resist any unlawful interference with their duties. Thus you have points and causes of collision between the two governments at every polling place in the United States. This is monstrous. I believe it perfectly clear that while the General Government leaves the State to appoint officers to conduct congressional elections, it has no more power to send men to inspect or direct them in the discharge of their duties than to send men to inspect or direct the governor of a State in the performance of his official duties—no more power than a State has to send men to inspect or direct a United States marshal in the lawful discharge of his duties.

Hence I assert that this whole system of Federal interference with State officers in the conduct of elections to Congress is utterly and flagrantly unconstitutional. It becomes more intolerably offensive from the fact that, for reasons of economy and convenience, the great body of State and local officers are chosen on the same ticket and at the same poll with Congressmen. So that the Federal supervision and control catches in its grasp our whole system of local politics. This law is revolution; to repeal it is to vindicate the Constitution and the traditions of local self-government, which are the fortresses of American liberty.

Gentlemen sneer at the apprehension of danger from these bad laws, and challenge us to instance abuses. Sir, it is enough that they are unnecessary and open to gross abuse to justify the demand for their repeal. They tell us the Army is too small to be used with effect in intimidating voters. But it must be recollected that throughout the South to-day a single soldier in uniform at any election precinct would be *posse* enough for any marshal to effect all the arrests he chose to make. One scattered regiment, to back up the marshals and supervisors and negro juries, would be ample in terrorizing any Southern State, and securing an election to the administration party. We need only recall the instance of Colonel Ruger invading the state-house in South Carolina in 1876 and packing the Legislature for the republican party, or of De Trobriand dispersing the Legislature at New Orleans, to be convinced that the regular Army, though small, can be most effectively used as a party machine.

HOW THIS PARTY MACHINERY IS WORKED.

In response to the demand to cite instances of the bad use of marshals and supervisors in controlling elections I take one case—the election for Congressmen in Saint Louis in 1876. I hold in my hand the uncontradicted testimony taken in the contested-election case last Congress of Frost *vs.* Metcalfe. It appears from it that E. T. Allen was appointed by the circuit court chief supervisor for the city of Saint Louis. He testifies that there was no occasion for the appointment of deputy marshals at that election, as the elections in Saint Louis had been theretofore peaceful and fair. Leffingwell, the United States marshal for that district, was of the same opinion, and refused to appoint any special deputies. Thereupon one D. W. D. Barnard, *a national-bank examiner*, who was an old acquaintance of General Grant and who had got Leffingwell his appointment as marshal, went to Leffingwell and said, (I quote from Barnard's own deposition:)

"You have got instructions from the Attorney-General to enforce the laws of the United States." "Yes, sir." "If you don't execute your orders I will see that you are not marshal much longer. The man that makes can unmake." Then said he to me, "What am I to do?" I said to him, "I can relieve you of that dilemma. Give me control of those marshals," and he says, "I will do it."

Question. Well did he do it?

Answer. I think so, sir.

Q. Was there any more necessity for the appointment of marshals for that election than for any previous election?

A. Oh, well, you gentlemen know very well that *in a political struggle for party ascendency it is necessary for the co-ordinate branches of the Government to be in accord*; and there was an effort on the part, so I interpreted it, of the party which I acted with to gain control of the House of Representatives.

One thousand and twenty-eight deputy marshals were thus appointed in Saint Louis to work for the election of the three republican candidates for Congress. A large part of them were democrats. They were selected through a Mr. John Codding and other reliable republican partisans. Democrats were preferred as deputies, provided they pledged themselves to vote for the republican candidates for Congress. Thomas Barrett, J. F. Ryan, N. W. Devoy, Michael Carroll, Matthew Horan, and Michael Welch testified that they were appointed deputy marshals on the distinct condition that they would vote for the republican candidate, and that others were appointed on the same pledge. Carroll testified that, after some talk about his politics, Codding said:

"I tell you I don't care a d——n what you are; I want you to do one thing, and I will get you the commission." Says I, "what is that one thing?" Says he, "if you will vote for Metcalfe I will get you a commission. That's all I want you to do. I don't care what you do for the rest of the party. I want you to vote for Metcalfe." He asked if I would promise to do that, and I told him yes; and then he went and got my commission, and brought it and handed it to me.

Thomas McNamara, a deputy marshal, testified that he was appointed eight days before the election, and was instructed "to move around the ward" and do all he could to help Metcalfe, the republican candidate for Congress. The deputy marshals were given lists of the voters, prepared by the republican central committee, and went from house to house inquiring whether the voters would be at home on election day. Whenever the answer was not positive, if the voter inquired about was a democrat, his name was marked for challenge or arrest. Witness said he took the oath as deputy marshal, and prepared to do the duty he was put there for.

Question. Now what duty were you put there for?

Answer. I had understood I was put there for Mr. Metcalfe's interest.

The marshals were divided into companies under captains, and Michael Welch testifies that his company were instructed on election day by their captain, O'Connor, "to bring in (that is, arrest) all the democrats they could, and keep them from voting, damn them."

By the expenditure of $20,000 in hiring these one thousand and twenty-eight bummers, and by marking five thousand seven hundred names of registered democratic voters for intimidation by challenge or arrest, the city of Saint Louis, which returned three democratic Congressmen at a fair and peaceful election in 1874, was made to return three republican Congressmen in 1876.

Bank Examiner Barnard was not disposed to hide his light under a bushel, but came to Washington to report to the Grant administration the manner of his success in electing three republican Congressmen from three democratic districts. In his testimony he reports an interview with Attorney-General Taft. He says:

Mr. Taft asked Mr. Mudd how many marshals he had. Mr. Mudd referred him to me, and said I had charge of the marshals; and he turned to me, and I said, "One thousand and twenty-eight." The old gentleman wheels round in his chair and says, "Were there no others out in Missouri you could have made marshals?" Says I, "Mr. Taft, we went in to win," * * * and he said, "*You bring a good deal of sugar in your spade.*"

Recollect, gentlemen, that this entire statement as to the execution of the Federal election laws in Saint Louis by the Grant administration is taken from the testimony given in a contested-election case in due form of law two years ago, where both parties were represented by counsel; and that its truth has never been questioned. Disgraceful as it is to the officials implicated, it is only what may be expected on a grand scale if the people shall consent to leave in the hands of the President the dictatorship over elections which these vicious laws confer upon him.

[Here the hammer fell, the hour for closing the general debate having arrived.]

Saturday, April 27, 1879.

The House having the same bill under consideration, under the five-minute rule,

Mr. EWING, in continuation of his remarks of yesterday, said:

OUGHT THE REPEALING CLAUSES TO BE PUT IN APPROPRIATION BILLS?

Mr. Chairman, the next question I wish to discuss briefly is whether we have the right, and if so, whether it be expedient, to put these provisions of repeal on appropriation bills. That we have the right

is unquestioned. The Constitution gives this House the exclusive power to originate revenue bills, and it is well settled that an appropriation is a revenue bill within the meaning of the term as used in the Constitution. It also gives to each House the exclusive power to "determine the rules of its proceedings;" and the rules of the House permit this legislation on appropriation bills, as it is "germane to the subject-matter and retrenches expenditures."

But we are told that for us to exercise this right is a threat and an insult to the President. I deny it. He has no reason to concern himself respecting the manner of our legislation transacted according to the forms of the Constitution. It is a threat and insult to Congress, and an impertinence to the President for party wranglers here to drag into this debate a discussion of his preferences respecting the method of our legislation. He should have, and doubtless has, no preferences to express on the subject—for it is none of his business.

But my colleague [Mr. GARFIELD] says that this legislation is insulting, because dictated by a caucus, which resolved to starve the Government to death if the President did not sign these bills. I beg pardon of the gentleman. The democratic caucus, if I may be permitted to refer to its action, did nothing at all, except to determine whether we would put these repealing clauses through as separate bills, or put them on the appropriation bills; not going one step further than that. And prior to that conference the caucus of the republican party determined that there should be no legislation done at this session of Congress except to pass the appropriation bills. As they have members enough to carry out their threat, we were thus presented the alternative of repealing this bad legislation through the appropriation bills, or letting it stand unrepealed.

Insulting to the President to put these measures on appropriation bills! Why, sir, does my colleague forget that in 1867, when he and the present President of the United States were in this House, they put on an appropriation bill a clause plainly violating the constitutional power of the President of the United States as Commander-in-Chief of the Army—requiring him to send his orders to the Army in a particular method prescribed by his political enemies? Surely Congressman Hayes would not have been guilty of the gross impropriety of insulting the Chief Magistrate of the Republic! Surely my colleague [Mr. GARFIELD] would not have been guilty of attempting to inaugurate a revolution! A few years ago my colleague had charge of an appropriation bill on which the "salary grab" was put, but though he was opposed to the clause he did not object to it as revolutionary, or as insulting to President Grant, though it doubled his salary for the term to which he had just been elected, in violation of the spirit of the Constitution. We all know that half the appropriation bills enacted since 1861 have had riders repealing or modifying or adding to existing laws. In fact the body of this very election law rode into our statutes on an appropriation bill; and it is eminently fit that it now ride out on one.

It is not the democrats who are insulting the President of the United States. It is the stalwarts of the republican party, who have denounced and vilified him for two years past because, like a patriot and a man of sense, he sought to put an end to their sectional agitation and restore peace to the country. It is they who are now holding the lash over him and threatening him with party expulsion if he dares to be governed by his own judgment and sense of duty instead of by the necessities of the party for a sectional political issue. My friend and colleague [Mr. GARFIELD] who was not a stalwart last session, but is a sword-and-buckler stalwart now, has recently very broadly intimated on the floor of this House that if the President signs these bills he will be acting "contrary to his conscience, contrary to his sense of duty." The gentleman from Maine [Mr. FRYE] assumes in debate here to pledge the President of the United States to veto these bills. The very pledge is but a sugar-coated threat. Another distinguished gentleman from Maine, the leader of the stalwarts, in a speech recently made not the length of this Capitol from here, said that the President ought to send back these bills without approval and say to us with all the scorn befitting his high station, "Is thy servant a dog that he should do this thing?" This is a delicate intimation that if he dare to sign these bills the whole leash of stalwarts will be turned loose on him. Another radical leader, equal in renown, says that "If the President be firm, the democracy must back down." That is, party advantage and not public good should control the President, and if he sign these bills he lacks backbone. O patriot statesmen! O watchful guardians of the President's dignity and honor!

[Here the hammer fell.]

Mr. MULDROW. If I am recognized I will yield my time to the gentleman from Ohio, [Mr. EWING.]

Mr. EWING. I am much obliged to my friend.

Mr. CONGER. I think I must object.

Mr. REAGAN. The time has been extended for several gentlemen. I ask unanimous consent that the gentleman from Ohio have ten or fifteen minutes.

Mr. CONGER. I withdraw the objection. But there are only two hours allowed for the discussion of all the amendments. If the gentleman's time is extended, there certainly ought to be an opportunity of reply.

CLAMOR ABOUT THE SOUTH.

Mr. EWING. Mr. Chairman, I see even the highest leaders of the republican party get down to the small business, to use no harsher word, of publishing lists of confederate brigadiers and soldiers of less rank who sit here in Congress. I am amazed that they are not ashamed of it. Why are the confederate soldiers here? Because the whole South, all the sweep of manhood from the cradle to the grave, had to enter the confederate army to meet our overwhelming numbers. The southern people have scarcely any other men of experience to choose from to whom they are attached by the sympathy of common struggles, common calamities, and common submission to the result. [Applause.]

I remind the gentlemen on the other side that since the confederate brigadiers have been in this House there have been no more great jobs passed through Congress; that by their action and their votes the destruction of our war money was stopped, and silver was at least partially remonetized, and the broken soldiers of the Union Army given their hard-earned arrears of pension. And I challenge contradiction of the fact that, from the beginning of the Government until now, Congress never has been purer and never guided by more patriotic purposes. [Applause.]

Gentlemen of the republican party, as you now sit and look in the faces of these ex-confederates—men of character, education, purity of personal life, with hands unsmutched with public plunder—you know that they are your peers in intelligence and ability and in devotion to our common country and its laws. [Applause.] You do injustice to your own hearts if you say otherwise. You know there is not a latent purpose of disloyalty either in them or in the great masses of the southern people they represent. And you know that if the honor of this country were assailed now, anywhere or in any way, they would fly to its support with an ardor as strong as ever burned in your own breasts. [Applause on the democratic side.]

Southern claims will be prated about on every stump at the North, I suppose, in the coming campaign. Southern claims!—when you paid over $100,000,000 of the people's money on them, and when, since the South has had true representation here, the whole southern-claims business has been in effect finally squelched. You republicans only ten days ago came up with absolute unanimity and voted against the bill of the gentleman from Wisconsin [Mr. BRAGG] to repeal the law establishing the southern claims commission, while the southern Representatives voted to repeal it.

[Here the hammer fell.]

Mr. MCMILLIN. I move to strike out the last word, and will yield my time to the gentleman from Ohio, [Mr. EWING.]

Mr. CANNON, of Illinois. If the same courtesy is extended to this side.

Mr. CONGER. With the understanding that unanimous consent will be given to this side for the same purpose.

Several MEMBERS. Of course.

The CHAIRMAN. That will be the understanding.

Mr. EWING. You are crying out for peace at the South and protection for the negroes when you are inaugurating a policy which you know necessarily makes peace impossible and endangers the happiness and prosperity of the blacks.

You know, too, that this whole country pants for peace. You know that every great interest is suffering because it is covered with the cloud of dust you raise in every campaign to obscure the issues that the people ought to be thinking and voting about. And you know, moreover, that you would meet those real issues now, if you were not aware that the moment they become the controlling questions the republican party will be driven from power.

Possibly you may again win power by renewing this sectional agitation; but you omit from your calculation one important fact. Within two years past a half million of men in the North have left the republican party and joined the nationals. Will you call them back by blowing the old bugle? Will you thrill them again with sheet-iron thunder about the South? Will they shed tears again over your Eliza Pinkston stories? [Laughter.] No, gentlemen. Two or three years ago they were troubled about the negroes; they are distressed about their own wives and children now.

We are denounced as inaugurating partisan legislation. Not so. What we ask is that there shall be no partisan legislation, but obedience to the Constitution and respect for the traditions of local self-government in which you and ourselves, your fathers and our fathers were reared. If you fear the democratic city of New York, we fear the republican city of Philadelphia, where we suffer as much by illegal voting as you do in New York. I utterly reject the proposition to change our constitutional forms and usages to meet local exigencies in a few great cities. Let them and the States in which they lie meet their local troubles as best they may. Moreover, the chief cities of the North are about evenly poised between the two great political parties. Either party can come forward now and ask for the repeal of these laws without just accusation of seeking undue advantage. We ask their repeal solely for the purpose of bringing this Government back to "the old paths, where is the good way"—to the theory that the people are the pure fountain of government, and that every step you carry power from them is a step toward making the Government more corrupt and irresponsible.

If it be true that the people of this country cannot be trusted to hold congressional elections conducted by State officers under State laws, without the intervention of the Federal civil and military power, without troops and marshals and spies to watch and command their officers and drag them for disobedience to remote courts for trial and

punishment—if the people have become so corrupt that good government requires that they be subjected to this despotic and hateful espionage—then our Republic is already rotten and its foundation built on stubble.

But it is not true. Outside of the cities the purest governments of this country are those that come nearest the people: first, the town and township governments; next, those of the counties; next, those of the States; and last of all, the Federal Government. Any abuse in our State and local administrations is almost always promptly punished, because the power is in the hands of those who know the wrong and demand enforcement of the penalty. But the Federal Government, remote from the people, is held to a far less strict responsibility. It may organize election outrages under this system, with a corruption fund drawn from the Treasury and from a host of officials, and it need but strike at a few critical points to accomplish its purposes; while the localities injured will have no power of redress, and communities elsewhere no distinct appreciation of the wrong. Leave the tremendous enginery of these test oaths, troops, supervisors, and marshals in the hands of the President, and, though the power may not just now be used at all, the day will come when it will be exerted to the utmost. It were a blind fatuity to let this legislation stand on the go-easy theory that the power it gives the President to control congressional elections will never be put forth. Sweep it from our statute-books, and then it cannot be used. Let it stand, and it may soon be wielded by a bold and bad Executive to subvert the Republic. [Great applause on the democratic side.]

Federal Meddling with Elections.

SPEECH OF HON. S. S. COX,

OF NEW YORK,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, April 17, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

"What is representative government good for?" Our reply is, It is good, especially good, good above all others, for doing the thing a government should do. It is bad, especially bad, bad above all others, for doing the thing which a government should not do.—*Herbert Spencer's Essays*, page 207.

Mr. COX. Mr. Speaker, extraordinary emergencies demand extraordinary methods. Wherever possible, unity should be given to all bills, both as to style and matter, which are here proposed. Good legislation is best had by compressing one subject into one bill, so that each proposition of an appropriation or other bill should stand or fall on its intrinsic merit or demerit, either for legislative or executive action.

UNITY IN LEGISLATIVE BILLS.

There is a unity in all things. There is a unity in nature, there are unities in art, in the drama, in chemistry, astronomy, and in fact in all the sciences. All nature is bound up in one bundle, while in its variety of mind and matter there is unity of design and operation. In the government of God this unity is most apparent; yet where is there such variety in unity? Why should human government be left out of this general law? Why should it not rule in the framing of laws for human society? Is it not wise, judicious, convenient, and honest that one statute should comprehend one subject? Why not discard all others? The wisest men, men of large experience and philosophic forecast, have inserted in our constitutions and ingrafted upon our progressive social philosophy the idea that every law should contain but one subject, and as if to insure the salutary operation of this rule should succinctly state that object in its title.

I dwell upon this practice of legislation because it meets us here at every step in legislation. In my absence, the gentleman from Massachusetts, [Mr. ROBINSON,] whom it is my pleasure to honor, in remarking upon Rule 120, which I introduced from the Committee on Rules in the Forty-fourth Congress, quoted from my statement that the rule should not have "so loose an interpretation as had been given to it." I did say that I never dreamed it would be carried so far as that you might tack on legislation that would extend to every department of the Government. I repeat it. That rule was primarily intended for retrenchment, and not for general legislation. It served its purpose well under the economic labors of Judge Holman and our distinguished Speaker. While I did disfavor its application to whole codes like Indian bills or post-route bills or subsidy bills as riders, I was anxious to use it to redeem the time by economy. The good sense of the rule is apparent, and the House has acted on it, in making a separate bill as to the Army at the polls.

I may be pardoned for giving more at length my reasons for this rule, as we expect to pursue it, if a veto is had upon the legislative, executive, and judicial bill.

Where two purposes are included in one law, by the nature of things, the agency employed must fulfill both imperfectly. The illustrations are familiar, and are drawn from the Edinburgh Review. A blade which is designed both to shave and to carve will certainly not shave so well as a razor or carve so well as a carving-knife. An academy of painting which should also be a bank would in all probability exhibit very bad pictures and discount very bad bills. A gas company which should also be an infant school society would light the streets illy and teach the children illy. There is no rule for good legislation so valuable as that which would overcome the "hinderance which results from multiplicity of parts." Dissensions are multiplied by it, and confusion is a consequence; but the worst feature of such legislation is, that bad legislation may get through on the merits of the good.

REPUBLICAN INCONSISTENCY.

What a loving devotion was shown by our friends on the other side, toward a good principle and practice, when our appropriation bills came into the House with riders tacked upon them! They forgot all consistency, all previous multifarious legislation of their own, to praise this beautiful and useful rule; but when we present our legislation in conformity with this rule, why have we no more peans sung in its praise? Why do the opposition here, with unbroken front, vote against and threaten a veto of an independent measure, which they promised to approve on the condition that it was engrossed in one single bill?

Inasmuch, however, as so much of this legislation which should be repealed was enacted by riders, it would not be very much amiss to repeal them by the same mode. To repeal a mischievous law, or any law, is by no means *in similicasu* with the enactment. When the repealing is done thoroughly, let us act on a lesson from the gentleman from Ohio [Mr. GARFIELD] at the beginning of this session as to contested elections: "Let us," he seemed to say, "now, at the beginning of this virginal and immaculate Congress, begin to be good and just. We have all been wrong before; let us now turn over to a clean white leaf and write our laws with the pen of the recording angel!"

While I have been strenuous both upon the Committee on Rules and in the House for this practice, as adopted by more than half the States; while amused at the pretenses of gentlemen as to "riders," the virtue of which they never knew till they were stoned with them, yet I do believe that the objections to the Army bill, in all other respects acceptable to the other side, except in the sixth military election section, are thin and untenable. They are unworthy of discussion, except as they deal, with this vicious parliamentary practice. Aside from that, there is not a scintilla to support the pseudo-statesmanship of refusing to sign a measure which repeals what is alleged to be already dead and disused, and because it is only the repeal and negation of a statute which allows force at elections under the pretext of keeping the peace.

What can be the objection to the independent bill as to the Army at elections? Does it exclude the civil posse from its operation, though armed? Does it not leave the President and his civil subordinates free to summon a force? Does it not give him every right to employ the Army and Navy even at the polls, whenever the fourth section of the fourth article of the Constitution and the laws passed to carry it out, require?

Who denies to the Federal Government a police force to execute its laws? Cannot the marshal, like a sheriff, call his posse? But we do deny to the Army, be it great or small, which is governed by articles of war, and not by the laws of the land, any police quality on election days. A soldier who obeys orders and kills a citizen cannot be tried for murder. He is amenable to no law; his business is to kill on demand. He has no place, therefore, in civil functions or franchises.

No part of the bill to repeal these election clauses threatens to domineer over the power of the Federal Government. It can still protect a republican form of government in the States and put down any domestic violence therein, when properly called upon. Nor does it interfere with the other constitutional call as to foreign invasion. Whether on election day or any other day, this same power remains. It will remain notwithstanding this bill. It remains, so that the Army and Navy can be used for the prescribed proper purpose.

Do you say such a repeal was not demanded? Have you forgotten 1870 in New York City? Do we fail to remember the State-house at New Orleans surrounded by General Grant's myrmidons? Do you forget Attorney-General Taft's prescript in 1876, and how the State-house in Columbia was guarded? In 1877 I passed into that State-house between Federal soldiers, with arms stacked in its corridors. It was high time in 1877 that Congress should demand a halt upon this despotic march. That we did; and the Army bill of that year fell. In 1878 we passed the *posse comitatus* clause. This the President approved. Then it was found that a section of the law (Revised Statutes, 2002) allowed the Army to "keep the peace at the polls." Then we struck at this fetter on free elections. It will also fall; fall it must, though the very veto may be answered by a new enactment which may also be vetoed. These separate bills are the Ithuriel spear to bring out the innate diabolism of the party of force. Is it any reason for opposing the repealing statute that the repeal is already done? Suppose it be true, as is said, that the laws already in force prevent military interference at elections. Suppose the new statute is surplusage; must the President therefore defy the majority of both Houses? But it is said that the bills are accompanied with a threat of starvation! Why, if the law had been already repealed, and if it were a good and necessary law—why does not the President ask for its re-enactment? He should, to be consistent; for if it were only

a repeal of that already dead, why beg to be "starved" when provisions are plentifully granted in the bill?

CABINET COUNSELS—THE VETO.

It is said that the President consults the Cabinet before he vetoes. If so, what will be the influence of Mr. Schurz, who held that the deed done on the 4th of January, 1874, by "United States soldiers, with fixed bayonets," in the State-house of Louisiana, was a gross and manifest violation of the Constitution and laws of this Republic? What will be the counsel of Mr. Evarts, who declared in Cooper Institute that no soldiers should interfere when men vote. "What use is it," exclaimed this gifted lawyer, "to give the purse and sword to the House of Commons or Congress, if the King or the President by military power can determine what shall be the constitution of the Commons or of Congress?" Or is the veto to be simply used petulantly, to show Congress that the President cannot be coerced into doing right? If so, where is the reason or pretext for the veto of separate bills such as we send him?

Is it said that the veto is given to the President to defend his office from the encroachment of Congress? Who proposes thus to encroach, by these repealing acts? Where does the President get the power to encroach on the States, by troops or supervisors at elections? All power of that kind, if it be constitutional, has been conferred by Congress; and is it not repealable by Congress? All who understand the object of the veto, must know that it is intended to check hasty and inconsiderate legislation, and not to be often used. It should be kept, like the diamond shield of Prince Arthur—which was under a veil, and which to "wight he never wont disclosed," except to fight monsters.

REPRESENTATIVE GOVERNMENT ENDANGERED.

Beneath these superficies of politics there lies a meaning that does not meet the eye. It concerns the very structure and spirit of our frame-work of freedom.

An English writer, James Mill, in speaking of Plato's republic and his politics, says that the ancients were ignorant of the divine principle of representation. To produce good government and happiness for states Plato had recourse to extraordinary methods; and though he failed as a ruler at Syracuse, he made the world of intellect radiant with his ideal commonwealth. More than a thousand years after Plato had speculated, men like Simon de Montefort made the practical and grand discovery which illustrates modern civilization. It is the representative nature of government. Since then, it has been roughly handled, but it has survived the revolutions of England, France, Spain, and Germany. Even after the barons failed to hold the King in check, no King of England was found great enough to overturn this system except for a time. The Stuarts went out from the roster of English royalty, because of their assaults upon the supreme power represented in the Commons. The chief features of our constitutions and bills of rights were drawn from these conflicts between prerogative and privilege. Those who contend for the privilege in America to-day are the democracy. They have the magic ring, on which the genii of Liberty wait.

PRIVILEGE AND SUPPLIES.

We assert the right of withholding supplies until grievances are remedied. The consummate flower of this historic struggle in England bloomed on the 3d of July, 1676, about one hundred years before our Declaration of Independence. It deserves to be written with a diamond pen. It was adopted by the Commons, and is not unwritten law. It is as follows:

All aid and supplies and aids to Her Majesty in Parliament are the sole gift of the Commons; all bills for the granting of such aids and supplies ought to begin with the Commons; it is the undoubted and sole right of the Commons to direct and limit and point the end, purpose, conditions, considerations, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.

The Irish Parliament maintained this right. No better statement of it has been made than that of Mr. Curran on the 16th of December, 1783, on moving that it was the exclusive privilege of the Commons of Ireland to originate money bills. He said:

And if the right be once given up or wrested from the Commons they cease to be the patrons and representatives of the people; another assembly will assume that power and the people will learn to look for that encouragement and support from the aristocratic which they now receive from the democratic branch of the state, and this house will become a very cipher, and its members, instead of possessing the power of encouraging arts, rewarding merit, or, in a word, of serving the country, will become the humble solicitors of another assembly. (Irish Eloquence, p. 46.)

It is the rule of our own Constitution as the debates in our constitutional convention show. But this I have fully discussed in a former "dead-lock."

However obnoxious, in a philosophic sense, riders upon appropriation bills may be, they are justified when great representative principles are in peril. Do gentlemen believe that such riders are invalid in the light of our history? To be sure they never became common, for every variety of legislation from a subsidy to a back-pay job, until republicans obtained power. Was not the Wilmot proviso, in 1846, placed on the Army bill of three millions for carrying on the war with Mexico, a rider? It was intended to stop the extension of slavery into any newly acquired territory. It was held by the House—ayes 92, noes 32—to be in order. The rider on the Army appropriation bill offered by John Sherman in the summer of 1856 is a case in point. It led to an extra session. In it was involved the use of the Army in Kansas. Did not the leading republicans, like Fessenden, Hale, Wade, and Seward, insist that it was based on the principle of the British constitution, ever jealous of standing armies and ever inclined toward civil supremacy?

It is not a new question, but it is a plain one. It has had its answer on both sides of the Atlantic. The colonists fought about it. The King of Great Britain was indicted in the great Declaration because he kept in time of peace standing armies without the consent of the colonial legislatures and because he would make the military independent of and superior to the civil power. How often are we to fight over again the same question? Or is it the fate of republics like our own to be ever vigilant for liberty?

USE OF RIDERS IN EMERGENCIES.

Gentlemen dwell upon coercion and constraint by the House upon the Senate and upon the President. Is he not as free to act as we are? There are cases involving organic principles of public conduct, where the coercion taught us by the British constitution by withholding supplies, may be drawn into valuable analogy. It is not only justifiable but dutiful. Can there be anything more important to the people of this country than the trial by jury, or, as Blackstone calls it, "the trial by the country?" If the importance and fairness of fair jury trials could be enhanced, is it not when associated with free elections and when voters are freed, when arrested by partisan spite and hate?

IMPORTANCE OF THE BALLOT—COMMON-LAW RIGHT.

On the Army appropriation bill, I remarked that to deprive a man of his vote gave the debarred voter a common-law right of action. I then referred to a famous decision of Judge Holt. Since that time I have looked up that decision. It is the case of Ashley *vs.* White *et alios*, reported by Lord Raymond, 938. One of the dissenting judges in that case held, that the action was not maintainable, because it was *primæ impressionis*. Never, they said, was a like action brought before! Another of the dissenting judges held that it was a little thing to lose a vote, and the law did not care for such small affairs. Other reasons were given, but the case grew so great as to draw the historic pen of Hallam. It was finally decided in the House of Lords—50 to 16—against the "enervation of the privilege of voting." The old common-law equitable action on the case was held to lie against any one who contrived to damnify the voter, by hindering and disappointing him of his privilege. This may have been the first step in the path of vindicating this important right of voting without hinderance. It was vindicated, and in the courts, but long anterior to the right, were the statutes and customs of England against using force at the polling places.

In England, as in this country, this right was founded upon statutes. In England it was even a part of their feudal system connected with boroughs, with tenures annexed to the various conditions and privileges in the English realm. The eminent judge who gave the opinion in favor of the freedom of the elector could not have added more emphasis to that opinion even had he looked into the future and comprehended the enormous abuses practiced in our own country. Holding that every man who had to give his vote to the election of members to serve in Parliament had a several and particular right in his capacity as a private citizen or burgess, he exclaims with an eloquence unusual to the bench—

Surely it cannot be said that this is so inconsiderable a right as to apply that maxim to it, *de minimis non curat lex*—a right that a man has to give his vote at the election of a person to represent him in Parliament, there to concur to the making of all laws which are to bind his liberty and property. It is a most transcendent thing and of an high nature, and the law takes notice of it as such in divers statutes.

After reciting those statutes, and after showing that the damage might not be merely pecuniary, (though any injury imports a damage when a man is hindered of his right,) and after an ironical sneer at the suggestion that it does not belong to the law, but belonged to the omnipotence of Parliament as a thing of which the courts should be very tender, he boldly strikes through all the meshes which had been thrown around the case, overcomes all the impediments which the Commons, the dissenting judges, the tories, and even the queen herself had placed in the way of judicial duty, and lifting aloft the scales of English justice equipoised, exclaims: "Let all people come in and vote fairly. It is to support one or the other party to deny any man's vote. By my consent, if such an action comes to be tried before me I will direct the jury to make him pay well for it. It is denying him his English right, and if this action be not allowed, a man may be forever deprived of it. It is a great privilege to choose such persons as are to bind a man's life and property by the laws they make." If on this point the Lords of England could defy even the Commons and side with the courts; if they so defied them, as to sue out *habeas corpus* to release those from Newgate who had brought suits in the courts for their right to vote; if this case has given the law to two continents in favor of that transcendent right, why should we hesitate, in this unfeudal land of franchise and freedom, to give adequate protection not only by fair jury trials and local statutes, but by keeping far and aloof the military who may be used to keep the peace at the polls and the supervisors and deputy marshals who are present for espionage, intimidation, and hinderance? Why should not every man who is prevented by supervisors or other officers have his remedy in the courts against the Federal officers? If the franchise be a sort of property, is not its taking away, robbery? Why

should our statute-book be still encumbered with laws which lead to litigation and which were made under pretense of war powers and born of the passionate zealotry of civil conflict? To rid the country of all such obnoxious statutes extraordinary methods may be justified on the plea of highest duty.

COERCION.

A good deal, Mr. Speaker, has been said in this debate about coercion. If it be anything, it is in exercising the right of the House, whence all money bills originate, to pass an appropriation bill and present it to the Senate with such conditions as they may choose to affix. Since the Senate is now in accord with the House in their policy, this species of coercion no longer exists as an urgency upon the Senate. As to coercion upon the Executive, if there be any, it consists in our choosing our own practice. We make our own rules under the constitutional authority for that purpose, and it belongs to nobody but ourselves to say what those rules shall be. But is not this coercive feature obviated by the form in which the army-election bill is now presented, independent of the appropriation bill? Where is the coercion now? If it be said we have a rear thought and an ulterior design, and intend, if the present bill against the use of the Army at the polls be vetoed, to withhold the Army appropriation, may it not be said in reply, that we are the judges of the order as well as method of our own procedure? If two bills are before the Executive for his approval, has he not the same right to determine the order of their consideration without compromising or influencing us? Where, then, does the question of coercion appear? First, we offer to the executive department the supplies for an army of twenty-five thousand men. We have coupled it with a condition that that army should not be used for forceful purposes at elections. The Executive rejects that tender of the money of the people, which it is our duty to grant, in our own fashion, because we do not allow him to compel by arms the choice of the people in choosing us. If there be any coercion in the matter, it is in the compulsory process from the Executive. It takes this form: "I, the President, choose to starve the Army, to disband it, and to allow no protection of the frontier or against the red enemy, unless I have the right also to move that Army at pleasure, upon the polling places of the people."

But even this pretense of starving the Army by the withholding of the appropriations, on conditions which we have a right to fix, is groundless; for do we not know that this same Executive, when the Army bill failed before, kept the Army alive, after it was legally disbanded by the failure of the appropriations? How was it done? By make-shifts and illegal processes, and by drawing on the future forbearance of Congress. There was no arraignment of the President for that. The Army was thoroughly supplied until an extra session of Congress was called. To be sure, it was unconstitutional and illegal; and if we had had a tithe of the spirit of the Long Parliament and the old Puritans, impeachment would have been instituted, and even consummated, for such truculent and audacious disregard of law. So that when men talk about starving the Army it is well to consider what has been done. Who doubts but that the capitalists of the country will readily cash the drafts of our Treasury, for members of the other side, in case the legislative bill should fail? Already it is understood that the Pacific bonanza kings will pour out their wealth, to line with silver, the clouds which may darken their hopes of salary.

STANDING ARMIES.

What then? Where is the great loss? There is not even the barren apology of avarice, to justify the cry of coercion and revolution. But suppose for a time there is no standing army, or one of the size contemplated, with its cost, is it to be regretted so poignantly? The Committee on Appropriations did more than their duty, in my judgment, in giving us an Army of twenty-five thousand men. Better allow our pioneers, who understand Indian fighting, to do this work upon our border and in the Indian country, than to keep alive this Army, if it is to be used to destroy the free choice of the people. The people of this country are not so much attached to an army of this kind as gentlemen suppose.

SMALL ARMY IN EARLY DAYS.

It was not the earlier practice of the Government to have much of a standing army. When this Government began—after our peace with England, when we numbered about three millions—on the 2d day of June, 1784, Congress directed all the troops to be mustered out except twenty-five privates to guard the stores at Fort Pitt and fifty-five to guard the stores at West Point. They were to have an appropriate number of officers; no officer, however, to be above the rank of captain. On the 3d of June, 1784, a peace establishment was fixed by resolution of Congress. It provided for seven hundred men only—one regiment—eight companies of infantry and two of artillery, for securing and protecting the western frontiers of the United States. Then we had a turbulent border, but no more need elsewhere for a standing Army than now.

ACT OF 1861-1865.

Under the act of July 29, 1861, the Army was first used at elections; it was so used down to 1865 in the border States. When in 1865 the bill was passed to "keep the peace at the polls," it was not with democratic help, though so alleged here. Many republicans refused to vote for it and democrats voted against it. It gave a pretense to General Grant to interfere. The democrats could not in 1865 get all they wanted; but they got all they could, to relieve the polls of the bayonet. It is not uncommon in political affairs, when they are wisely conducted, for statesmen to practice on the half loaf or no bread principle. During the debates in the English Parliament for the amelioration of Ireland, in 1844, it was said, "Why did not the Catholics, who in 1757 and 1792 were seeking the removal of penalties, complain of the Established Church?" It was well answered, because it was not the ordinary progress of opinion; and that all grievances could not, at once, be remedied. Did we begin here in America to abolish slavery altogether? No; the slave trade was the initiative. So in the relief of the voters from the Army; we did not get what Governor Powell wanted, but we got what we could at that time.

PARTISAN ELECTION LAWS.

The obnoxious statutes as to elections which we seek to repeal were placed upon the statute-book for partisan purposes. They were intended to perpetuate party power. They were intended to fetter the white race in the South and reduce democratic majorities North. There was no demand for them, from the cities affected, or from the people; nor have any class outside of the cities affected asked for them. They were intended as a party whip and fund. Their repeal is demanded because they are capable of perversion and because they are a cloak for fraud and a provocation to violence. They deface the statute as they discredit and distrust the will of the people. They were bad in their begetting, and bad things go on invariably to worse. Their repeal is complained of as if it were intended to foster fraud or perpetuate force. Who complains? Is it the party who, in spite of all professions and in defiance of existing laws, levies an installment on Government officers at every election to bribe voters in doubtful States? Is it the party which sends its thousands of clerks from Washington to their homes to distribute and vote their tickets? Is it the party which has used hundreds of thousands of dollars out of the public Treasury to hire its riff-raff marshals and supervisors to suppress and control the franchise? Whence come these complaints? Does not the burden of them come from six New England States, with their population of three million five hundred thousand and their twelve Senators in Congress, which would enact such laws for New York, with its population of four million five hundred thousand and only two Senators? Is it from little Rhode Island, where poor white men are disfranchised by the thousand, because they do not belong to the property-holding class? Is it the party which now clings to a system of forced ballots and test-oath juries, when they see their power is departing?

Is it said "that the democracy has not suffered by the existence of these so-called paternal Federal safeguards at the polls, and that we are solid at the South and strong in the cities North?" It is often so said; and then it is added, "How could you succeed if such clamps and shackles were on your limbs?" Ah! we succeeded in spite of them. Your party is in a minority here, in the Senate, and in the country. It was made so, notwithstanding such infamous laws of force and cunning which we seek to destroy. Two persons once disputed as to the laws under which Charles I was executed. It was settled by the reply: "By all the laws he left them." So it may be said of the republican party; they were beheaded by the very laws they themselves left, after their long riot and plunder of the prostrate South and their attempts at forceful control in northern cities.

NEW YORK ELECTIONS.

When this appropriation bill and its rider were before the House last session, the gentleman from Maine [Mr. FRYE] sustained the character of Mr. Davenport and his public conduct with regard to New York elections. He quoted from the report which I made as chairman of the committee to investigate alleged election frauds in the cities of New York, Brooklyn, and Philadelphia, submitted to the House in 1877. I was not present when his remarks were made, else I should have answered him promptly. This session my colleague, [Mr. MCCOOK,] with others, has given out the same erroneous impression as that made by the gentleman from Maine. So, too, a Senator from New York and Senators from other States have drawn on this report to sustain the legislation we would repeal. That impression was, that I commended the law under which Mr. Davenport acted, or at least commended his official conduct under it. To correct that impression pertinent extracts from that report, not garbled or partial, are necessary.

But first, as to the history of this legislation as it affects New York. When this law appeared in this House in 1870, and its supplement appeared in 1871, I opposed them by vote and speech, and in the report of 1876, I took good care to give credit for its execution that year as approximating as near to perfection as possible. There were no fights, no bayonets, no disturbances, no conflicts of authority, none of the concomitants which accompany fraud and endanger free institutions. It was as unlike the elections of 1870 and 1872, 1874 and 1878 in New York City as the elections in Philadelphia are unlike those of New York. Compared with other elections in Philadelphia and elsewhere, it was distinguished by its fairness. In that report I said:

Whatever may be said about the United States law as to elections or their supervision by United States authority; whatever may be said as to the right of a State to regulate in all ways such elections, this must be said, that the administration of the law by Commissioners Davenport, Muirhead, and Allen, the United States functionaries, and their subordinates, was eminently just and wise and conducive to a fair public expression in a presidential year of unusual excitement and great temptation.

The report attributes the success in 1876 to the virtue, intelligence, and citizenship of those cities and its various organizations of both parties, and not to the law, nor wholly to the execution of the law.

What was the origin of that investigation? It was a challenge from a (then) republican member from New York, General MacDougall. He disputed the regularity and honesty of that election. I accepted the challenge; and the committee was raised. New York that year gave over fifty-two thousand democratic majority. This the investigation showed, while it proved that the charge of repeating and fraud so glibly and falsely made against New York City that year was as base as it was baseless. This the gentlemen accept now as true, by quoting my report as correct. They confess to a slander upon the democracy of 1876 by agreeing to my conclusions. Both republicans and democrats agreed, what Mr. Davenport and the district attorney, Mr. Bliss, concurred in, that the election was the fairest and best ever had in that city. But to whom was the credit due for it? Out of the one hundred and eighty-three thousand registered, about three hundred men were arrested and only thirty of them were held. Mr. Davenport himself swore that in many cases of arrest the fault was with the inspector and supervisor, and not with the voter himself. But even then it was considered a sort of relief that only three hundred were arrested; as there were fifteen hundred for whom warrants were issued, and out of them only three hundred came to the polls. Ninety per cent. of those arrested were allowed to vote as legal voters after trial. This was our best election, under a special agreement all round that it should be fair. Why was this election so exceptionally gratifying? Why did Davenport testify to its regularity and fairness? If so, why did he in 1878, after that testimony, begin to arrest men who voted in 1876, under alleged fraudulent naturalization papers? Either he was untrue in his story of the election of 1876 or he should not in 1878 have arrested men for voting wrongfully in 1876. Perhaps I can solve these questions, without imputing to Mr. Davenport anything sinister or corrupt, as did the New York Times. The State of New York and the city of New York were prepared with their civil force and their militia to repel unjust interference in the election by Federal force or otherwise. A conflict was impending in 1876, as in 1870. The better class of citizens of both parties agreed upon a plan of action. The Federal law being unrepealed and about to be executed, under fierce excitements, an understanding, after much parley, was had between the Federal and State officers and the city police, so that every precaution against fraud and force, illegal registration, voting, and arrest was taken. Let the report speak on this point:

> The United States commissioner, along with the mayor of the city and the president of the board of police, General Smith, had a meeting to allay any excitement occasioned by rumors which always precede an election. The United States marshal, district attorney, and the counsel of the corporation of New York were called in. They were men of various politics. They came to an agreement, which was signed, so as to execute the law without straining it, and so as to adjudicate without irritation or impediment the questions which might arise during the day of election. Throughout the whole length of New York—sixteen and a quarter miles—arrangements were made to prevent bringing men any distance from their homes or the polling place. The commissioners were distributed over the city, and from early morning until after the polls closed cases were taken before them, and information given by them as to voting. Four lawyers were selected—General Barlow, Mr. Alderman Billings, Mr. Marbury, and Mr. Olney. They, too, were equally divided as to politics, and the rule was adopted that whenever they found a reasonable and well-founded doubt as to a person being a legal voter, the voter should get the benefit of the doubt, so that he could take an oath under challenge, and have applied to him by the inspectors the test of the law. It was intended to provide not only against fraudulent votes, but that no person really entitled to a vote should be refused. The political organizations concurred with Mr. Davenport in this arrangement. It proved a decided success, and the result was, what all who have any knowledge of this New York election have concurred in confirming, that there was comparatively no fraud, and the attempts made to repress it were welcomed by both parties and carried out in good faith.
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> So that, as a compendious statement resulting from these prudential measures, it may be said that out of 183,000 registered voters, only fifteen hundred warrants were required against those suspected of fraud; and out of those fifteen hundred for whom warrants were issued, only three hundred came to the polls. Those three hundred were arrested, but they were generally of a class which has a right to vote.
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> The committee does not mean to justify the publication of the names of those who are thus advised that they will be arrested, for there may be many honest men in the list, who, apprehending arrest, may lose their honest votes. But, in spite of these harsh measures, which may deprive some of the franchise, the committee are decided in the opinion that the result is an astounding one, where out of 183,000 registered only about three hundred men were arrested, and only thirty of them were held.
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> Whether this work, which is unexampled, should be accounted a republican work, through their Federal election law, or the work of the local authorities and organisms, inspired by a desire for an honest vote among the people, who were especially jealous of it on account of what was occurring elsewhere, one thing the committee must report, that it approximated as near to perfection as it was possible to do.

There is no justification in this report of this law, nor of its previous execution. As my name has been invoked in Senate and House as one worthy to be quoted by republican gentlemen, I add the statement that subsequent elections have shown the comparative fairness of the election of 1876 either to be the result of exceptional goodness that year on the part of Mr. Davenport and his allies, or, as the New York Times charged, the result of some occult perfidy on his part to the republican party, that seemed to demand of him every year the atrocious abuse of his powers.

This official whose friends boast that in this one year, 1876, he acted fair and told the truth, reminds me of the culprit who was about to be hung. When the clergyman asked him if he could not recollect at some time or other doing one good action, after much hesitation and regret, he replied: "Ah, yes; once—that was to let a fellow go whom I ought to have dispatched." Like Davenport, he was regretful and troubled for doing one good thing.

Arrangements, as thus appears, were made by which those arrested should be tried at once and relieved if not guilty. All excitement occasioned by rumors of conflict which preceded the election were thus allayed. The United States authorities and corporation counsel of New York, the president of the board of police—men of various politics—came to a written agreement, unofficially, that the law as it stood, for good or evil, and as about to be carried out, should be executed without straining it. They consented, for the peace and safety of the city, to adjudicate promptly all matters in dispute at the polls. Throughout the whole length of the city, the compact thus made to prevent bringing men from their distant homes to the polling places was honestly adhered to. Commissioners were distributed over the city for that purpose. The four lawyers selected from both parties attended to this voluntary business. In all cases of doubt the voter got the benefit of the doubt, so that his vote was given.

The Federal officers were not exactly coerced into this arrangement; but they faithfully concurred in it. This the report frankly commends.

What peculiar and hidden reasons there were which led to this amicable and just arrangement, and deference to local authority, I do not now state. Some attribute it to schemes and bargains to keep certain men in local offices. However, it is true that many New York republicans bitterly denounced Mr. Davenport for his honesty that year. They charged that he lacked fealty to his party in giving the democracy a fair election! It was more than hinted that he had been purchased by the democratic leaders. I do not accept this explanation. It is not necessary to account for his exceptionally good conduct at this election on such grounds. Every one knew that New York was thoroughly democratic then, as it is to-day. There was no hope of carrying it for the republicans then, any more than there is now, unless by a corrupt combination of democratic factions with the debauched opposition. This was accomplished in 1878; and a part of the plan was the arrest of naturalized persons, which led to great abuses, and complaints on the part of the regular democracy of manifold outrages. These complaints led to another investigation by Judge Lynde's committee, hereafter referred to.

Was I not right, therefore, in vindicating, even by Mr. Davenport's evidence, which he tendered voluntarily, an election which was so thoroughly fair and democratic; especially when taunted with its bad character by our enemies in that Congress?

How unlike that election was the last one, when no such friendly arrangement was possible, though it was again attempted by the democracy. That such an attempt was made last year is evidenced by the statement from Colonel Wingate in the New York Sun of April 16, 1879, wherein he says:

> In May, 1878, in pursuance of a request from Commissioner Davenport asking for a committee of lawyers to confer with him in relation to the naturalizations of 1868, Tammany Hall had appointed Judge Quin, Mr. Cozzens, and Mr. Purroy. Upon consulting with Mr. Davenport, it was found that he was inflexible upon the point that all the 1868 certificates were void on account of the defect in the record kept by the clerk. The committee denied this proposition (taking the position assumed by Judge Blatchford) and therefore found it impossible to act with him. They thereupon established a bureau of information, and gave public notice requesting all persons having doubts about the validity of their naturalization certificates, or who had been imposed upon in relation to them, to call there and have their cases investigated, and published the United States law as to what certificates were invalid. A large number of persons called at this office, whose papers were examined, and, if found defective on account of any actual fraud or improper act, steps were taken to renaturalize those holding them.

No such arrangement being possible, the democracy did all in their power to correct any irregularities and frauds of 1868, and to avert the subsequent arrests and arbitrary conduct of the chief supervisor. The sequel will show how vain was their attempt.

COMPARISON OF PHILADELPHIA WITH NEW YORK.

How unlike the Philadelphia election of that same year, (1876,) when and where there was an excessive registration of from twenty-five to thirty thousand,—was the New York election of that year. There no amicable arrangement that year was made with the local authorities for fairness, for the local authorities were republican, and it was one-sided. What a commentary is the comparison between New York and Philadelphia! The latter city, with a population of about eight hundred thousand, had a registration of one hundred and eighty-six thousand; while in New York, with the population nearly 50 per cent. greater, the registration was but one hundred and eighty-three thousand! What a commentary is it, that over twenty thousand names registered were successfully attacked and the names stricken out by the courts! Nine-tenths of those were attacked by democratic petitions. Over eight thousand of those on the Philadelphia list were myths, "stiffs," men of the grave-yard, whose names were used by repeaters and personators. Was not the committee justified in its assertion, that Philadelphia, not only for 1876 but for many years, was a monstrous exception, inasmuch as there was a "system there fixed and crystallized for bad franchise," and that the Federal supervisors themselves aided these frauds?

NEW YORK STATE LAWS AS TO ELECTIONS.

Do gentlemen know what safeguards the New York State laws throw around the polls? Do they know what a careful code New

York has, or how a New York election is conducted? Or will they take the slanders upon that city uttered in the press and repeated recently by the Secretary of the Treasury at his Ohio home? Misrepresentation can only recoil on him who makes it. It does not stifle the truth. He who gives a false statement and deduces conclusions from it, only answers himself.

Why, sir, the Sabbath day is not more quiet than election day in New York. It is the holy day of our sovereignty. The State laws require inspection from both parties, police supervision, registration, and every precaution against militia or military presence or control. They forbid, under penalties, the calling out of her troops on election day, or within five days prior to election day. Courts are not held on that day. The cases of insurrection or invasion are an exception. All saloons are closed; the tickets are distributed from booths aloof from the polling place; the polling place is guarded by police from intrusion or rowdyism; glass boxes are used for the various tickets, sometimes six or eight in number, according to the various offices. The registry, previously taken on four separate days under great precautions, is examined for every man who appears; and when he votes his name is checked; he sees his ticket dropped through the glass, and he knows at least that it is in the box. No complaints of late years have been made of fraud in connection with the counting, at least since I have lived in New York. Rarely have we contested elections, even in local politics. Fights, rows, drunkenness, and violence are hardly known on election day. Slanders, such as have been uttered about that city, of its rum-shops, slums, and lazar-houses, pouring forth their reeking influence, spring from the baldest ignorance. And yet it would appear, as was charged here when this supervisor bill first came in, in 1870 and 1871, that it was directed solely against New York, because of the ineradicable corruption by which the city always voted democratic.

NEW YORK—THE SHINING TARGET.

That democratic city seemed to be a shining target for the aim of radicalism. There was malevolence enough in Congress, during the first few years after the war, against that island city to have sunk it in its harbor; but such malevolence is limited, though not always impotent. It was not enough to discriminate by legislation against its commercial and other interests, but you must send there Army and Navy and a cohort of spies and paid canvassers. Never was there such a collection of lazzaroni under the pay of King Bomba in the worst days of Naples, in 1850-'51, as Davenport gathered for the execution of your Federal laws. When in 1871 I referred to them I only produced facts patent to all when I said:

> After all this preparation of force the object failed. The democracy carried city and State, and the State outside the city. Why? Because of the corrupt practices and unjust conduct of the Federal officers in the city. True, many voters were intimidated and failed to register; but their places were taken by the hitherto indifferent but then indignant citizens. The mayor, ever prompt for the honor and fame of the city of his birth and choice, and desirous of a fair election above all things, made a list of officials, to be presented to Judge Woodruff. They were men representing the democratic party under one provision of the law. The list was made up of men of business and respectability. Every one of the list had his address in the directory and affixed to his name in the list. They were scrutinized and indorsed by two eminent attorneys—one a republican, Mr. Stoughton, (since minister to Russia,) and the other, George Ticknor Curtis. This list was handed to the judge. The mayor in person urged their selection. Instead, however, of selecting from each party an equal number and taking this list as the democratic portion, what did he do? He rallied the bad houses and slums; he selected, as Governor Hoffman demonstrates, the thieves, bullies, vagabonds, blackguards, and cut-throats, men without business or character. He skimmed from the boiling caldron of venal politics and crime the very scum of New York City as Federal agents of registration and election. This was done to make a pure, fragrant election—Lord Holt's "transcendent thing!" He had selected those who were morally afflicted with that wholly incurable disease, vermin-gendered, called *trichinosis*.
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> Lists of this crew of Federal appointees appeared in the papers. The correctness of their description was unchallenged. The police reports previously and up to and after the election furnish the various qualities for an official under this judicial execution of this injudicious law. Wife-whippers, penitentiary-birds, and street vagabonds, beastly bloats, and convicted felons thronged Chambers street, three thousand and more, for some days, fighting and swearing for precedence to get their Federal commission and their fees under this sort of legislation. I saw this "rakehelly rout of ragged rascals," more detestable than
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> "The race obscene
> Spawned in the muddy beds of Nile."
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> They polluted the very gutters in front of the Federal officers. They drove the marshal wild with dismay and excitement. "These, these," he might have been heard to say and sing, "these are the champions of republican ideas; these are to purify the ballot; these, in Whittier's words, in his song "On the Eve of Election," are the powers that stand guard about empire's primal springs, the uncrowned American kings:
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> "The mold of fate that shape the state,
> And make or mar the common weal."

But with all the spiteful and disgraceful exercise of unconstitutional and proscriptive power, you could not and you cannot drive or cajole the voters of that city. Its merchant princes and skilled mechanics, its masses are democratic on principle, and no threat can change their politics. Your laws have been framed to do by chicane, stealth, force, and threat what you could not do by reason and persuasion. They have been aimed at both adopted citizens and the native-born, but especially the former; but your endeavor has failed. Although you may cut down our vote a few thousands, other thousands will spring to take their places. You may thunder your philippics against the vice-breeding city. Your thunder is *brutum fulmen;* it has no stroke, no lightning.

There are some men so constituted that they cannot see anything good, even though it be under their eyes. The radical purist, when he visits New York, judging by his distorted and prurient pictures, has been inspired by the paramount desire to look after that which is not proper. He forgets that what he does see is not normal to the condition of that charitable, intelligent, and wealthy metropolis. He sees the ulcers, the spots on the skin, but not the good heart, elegant tastes, and splendid enterprises which make it the peer of any city of the world. Its register of crime shows the worst kind of crimes, rape, murder, burglary, and larceny, to be those committed by emigrants from other regions, like New England, where people are more cold and crafty; while many recent cases show that the venial offenses, assaults, mayhems, &c., crimes that grow out of passion, are more frequent with those who are either native to the city or alien. If gentlemen who visit New York will forget that is the entrepôt of our commerce, that nearly one half of our exports go from thence to all the world; if they must go to the pestiferous and foul dens of that misjudged city, they will find the class of people who are used by the Davenports and others under this law which we now seek to repeal. They will then learn to discriminate between that licentiousness which belongs to the Federal gang and the honesty of the democratic voter whom that gang are hired to harass, threaten, arrest, and cage.

When this law was before Congress for discussion in 1870, I prophesied then—even then when the republicans had the police of the city and all the power to control and arrest all whom they alleged to be the repetitious and fraudulent voters—that we would add further to the democratic strength. All the spies, informers, supervisors, and marshals have not been able and never will be able with all the penalties and *posses* of the supervisor law to change our democracy. The prophecy was fulfilled. Whether the law be honestly or dishonestly executed, it is only a matter of majority. Not all the money spent recklessly and fraudulently from the Federal Treasury, amounting, as we will see, to its hundred thousands, given out without voucher and spent without accounting to defeat democratic Congressmen, accomplished no result until an infamous coalition for local spoils, already dissolving by its own putrescence, was effected. There is a purity, courage, and integrity in the vote of that city not to be slandered without rebuke. Ah! if gentlemen knew the inner, daily beauty of its generous humanities, and the benefactions of its noble institutions to the widowed, orphaned, blind, deaf, insane, houseless, and unfortunate, which has won for New York the proud name of "city of charities," even partisan hate would forget its malice to admire and bless! The more you exert your Federal power to provoke collision, the brighter its fame grows. The greater the abrasion the more it is burnished. When you make Spartans out of the black race South, then you may, by your Federal laws, make Helots out of the white race of New York.

It has been my pride and pleasure, Mr. Speaker, to have represented three districts in different parts of that city,—not only the rich avenues, but the homes of the toiling men; not only the great merchants who trade outland and inland and who deal in commodities and products by the million, but the small merchants and skilled laborers have given me their trust. It is my special pleasure, as it is my loving duty to that city, which has been so confiding and hospitable, to represent to this House that the slanders which have been uttered against it have been exaggerated beyond human credulity. I do not pretend that New York is free from all taint. Corruption is incident to all large communities. Even gold has its alloy. But New York is not the city which one of our Senators depicts. To him who looks for the best, it is the city of goodness. No other city is comparable with it, for unselfish devotion and generous deeds, in war or peace, whether toward a flooded town of Hungary, a burnt city of the West, or a fever-stricken community South.

NEW YORK ELECTIONS, 1868, 1870, ETC

Much undeserved reproach has been cast upon the elections in New York in 1868 and 1870 and other years. To neutralize the source of this falsehood about these elections, let it be known here, once and forever, that the machinery of these elections then, in the city of New York, was in the hands of police commissioners, each of them appointed under a republican Legislature. All election officials were named by them. No fraud was possible except by their connivance. Tweed himself had no power to control New York City, except by subsidizing and using the republicans of the New York Legislature; and this he did.

In 1870, at an important juncture, when Grantism was on trial, application was made to the President for troops; not by the city of New York, nor by anybody in authority, but by irresponsible men of whom Supervisor Davenport is a sample. One of their objects was, doubtless, as Sir John Romilly said about an English statute, "a technical system for the creation of costs;" for they called for legislation to aid their avarice. Another object was to frighten the voters of New York by a show of Federal power. For this purpose the Secretary of War, Belknap, sent a communication to General Sherman on October 27, 1870, instructing General McDowell to hold troops in readiness for service during the election week. This was done ostensibly to sustain the officers of the United States, in enforcing the laws and to answer any call of the marshals for such purposes, and at such points and in such numbers as the marshals might signify. Then and there he gathered his troops; he even had his gunboats in the East and North Rivers bearing on the city. There was no law, organic or otherwise, for this movement. It was not under a

call, constitutional or otherwise. The Federal troops had no right to invade that State under the circumstances. It was a provocation to a breach of the peace. The peace of the polls had not been threatened; not until these armed men appeared. The governor of New York protested; he gave notice that such things should not go on. Our splendid "National Guard" was ordered to their armories.

The Federal authorities began, after this sharp experience, to find that there were two parties who could practice upon military principles. A collision with the troops openly was avoided; but the marshals appeared armed with our United States Navy revolvers. They undertook to do superserviceable work for the republican party. The rowdies of the city, two thousand of them, discharged convicts, felons, the worst men of the metropolis, were armed with this tyrannical power. Had the Federal troops, without being asked, appeared on the streets of New York, as was threatened on the 8th of November, 1870, election day, there was the National Guard with one hundred thousand ball-cartridges and four hundred rounds of canister shot, with cartridges for the artillery, ready to receive them. They were prepared then, as they will be hereafter, to protect the freedom and peace of the Empire State at the polls. This detail as to arms and cartridges is from the report of Adjutant-General Franklin Townsend to Governor Hoffman. We all prayed that wisdom and good sense would avert the necessity of their use. By some instinct or good counsel even the General-President Grant and his advisers became discreet. No Federal troops publicly appeared. They hid in halls and breweries and worse places. But there remained the brood of supervisors and deputy marshals, such as I depicted in my speech in 1871, and with them the infamous law which begat them and their masters.

The republican governor of Pennsylvania echoed the words of Governor Hoffman, of New York, when, in his message of 1871, he denounced the employment of troops in this manner in his own State; and yet we are told by gentlemen of the other party that these Federal methods in elections are to be desired to prevent fraud and keep the peace!

By section 2002 (Rev. Stats.) the number of marshals is indefinite. In 1876 a number equal to one-half of the regular Army was appointed and paid. They are both judges and constables. They decide as to "order" at the polls and as to "fraud" in registration and voting. They supervise State officers, and arrest, with or without process, at their pleasure. Could the subversion of the rules of right and the guarantees of law go further? Where is the right which lifts these supple tools of a Federal Administration above the States and the people? Not a word of this enslaving and degrading statutory system should remain.

Are we forever to be obliged to secure fair elections at the risk of armed collision between Federal and State troops? Must the States always coax the President and his subordinates to make extra-legal arrangements, so as to execute mildly the supervisor law and so as to give an honest election? What credit is due to the Federal Administration when we have to compel freedom by the display of the State forces? Must we rely on the forbearance of Federal officials and the good sense of the citizens of both parties, to compel acquiescence in decent methods in holding elections?

STRETCHING THE POWER TO STATE ELECTIONS.

This extraordinary Federal power is used intentionally to affect elections for State and local officers. Congress named a day for the election of Federal officers, Congressmen and electors, which was the same as that for State officers. Why? To use the Federal power over all. What would affect or terrify the voter for Congressman or elector would do the same for local officers. Sometimes it happened—as when I was a candidate to fill the vacancy caused by the death of Hon. James Brooks, in 1873—that only one Federal officer at one election is to be chosen in a great city of a million, as New York; then, forthwith, the whole machinery of the United States supervisors and deputy marshals is brought into play.

The money accounts of John I. Davenport pertaining to this election are interesting. They are taken from the Caulfield report of 1876, (No. 100, Forty-fourth Congress, first session.) In this one district, where a coalition of republicans and democrats united upon a democrat to defeat me the chief supervisor swore in four hundred and sixteen subordinates in one batch. He filed three hundred returns of the canvass where there were about one hundred voting precincts. He actually charged $4,299.90 for indexing 28,666 folio index records for this one election. This account was sent here to an honest Comptroller; but it was more than he could stand. He reduced the "error" of folio indexes from 28,666 to 5,980; cutting down the amount at one dash to $1,409.75, instead of $4,812.65. The Comptroller afterwards wrote to this extravagant chief supervisor, under date of February 27, 1874, that he had only charged $11,999.15 for indexing the records of all the city; and yet in this account for that odd year, more than one-third of this sum was charged for one congressional district!

Considering that a lawsuit has developed the fact that my opponent paid large sums, amounting to thousands, to one of his best backers to be spent to defeat me; that my majority was nearly 7,000, and that I was somewhat new to the district, the race was indeed a success; for it was made against the United States Treasury, a street-railroad president, and a piebald coalition. But in spite of these and other unpropitious circumstances, the people confided their interests to my keeping.

EXPENSE.

When so much is at stake, it is almost childish to discuss the expensiveness of the law and its execution. But this must be said, that nearly all that is spent is lost, or used as a party fund, and much that has been spent and paid to Davenport is wholly unaccounted for. We have paid lavishly, from the hard-earned earnings of the needy and the savings of the poor—who are most taxed and least able to bear the burden—hundreds of thousands, and for what? To subsidize, at $5 a day for ten days, the creatures of this atrocious system, and to keep in disgusting prominence a life-officer, whose only function seems to be to glut his greed and give discontent to the people.

IS IT SECTIONAL IN ITS OPERATION?

Is it said that this law was made only for the South. The figures contradict the assertion, for in the North in 1876, $220,515.64 was paid to these marshals, while in the South but $54,770.96. In 1878 $24,636.74 was paid in the South, while $177,654.35 was paid in the North, and more bills of thousands more are to come.

ORIGIN OF THE SUPERVISOR LAW.

When the gentleman from Colorado, [Mr. BELFORD,] on the 2d of April, said that the pivotal point we were aiming at in the repeal of these election laws was New York City, he was partially right; but when he said that the barriers against fraud and violence were thus to be swept away to carry that city and State, he greatly missed his mark.

Sir, the city which I represent in part, has been the special victim of this law as carried out by the chief supervisor. It becomes almost a duty, in the absence of any speeches by my colleagues from the city, that I should analyze the law and give a true statement of the action of Federal officials under it.

When the first law of 1870 was passed I denounced it, as I have said, with all the vigor I could command. On February 15, 1871, when this law was sought to be supplemented by an act "to enforce the right of citizens to vote in the several States, and for other purposes," I presented the question anew in the light of its execution the year before. I based my argument upon the rock upon which the Federal arch itself reposed, holding that the Federal power does not and cannot have or create the elector. Believing that he was the creation of the State, and only recognized by the Federal Constitution as a State elector, I maintained that he was only a State agency to carry out the granted power given to the Federal system. This argument is founded on the opinion of Judge Story as to the unconstitutionality and inexpediency of any Federal law interfering with State suffrage. Hence not only the original law but its proposed amendment in 1871 were sheer usurpations. Its execution was the pernicious abuse of usurped authority.

Since that time, Chief-Justice Waite (21 Wallace) has declared that the United States had no voters, and that the elective officers of the United States are all elected by State voters. Where, then, is the Federal power which confers the elective franchise? Whence the authority for all these devices to strangle the public will?

COLORED VOTER—A PRETEXT.

One pretense for the law at that time was that New York would forbid the newly enfranchised colored vote. The truth was, that New York had already followed the Federal Constitution and had enfranchised the negroes by her own statute. They voted without hinderance.

The facts pertaining to this election of 1870 will be found in my speech in the appendix to the Congressional Globe, Forty-first Congress, third session, page 127.

NEW YORK FEDERAL OFFICIALS.

Governor Hoffman well said in his message of that year, that "a large number of United States deputy marshals and supervisors were appointed, many of whom were men of well-known disreputable character, and some of whom had been convicted criminals, a class of dangerous men, never before chosen by any ruling authority in any community as conservators of the peace."

Yet these were the men who undertook to arrest at the polls citizens who had the right to vote and who had voted for years. These were the men who sought to arrest State inspectors who were charged by law with the custody of the ballot-boxes. These arrests were to be made without that process of law issued upon formal complaint, required by the Constitution. The election of 1864, when Governor Seymour interdicted Federal troops, like that of 1876, which I have described, was due to the firmness of the State authorities and the compliance of the Federal Government. But we cannot be sure that any year will give us this relief. Since that time, the State of New York has been standing, with its hand upon sword—the sword of its own chief magistrate.

When, therefore, my colleague [Mr. MCCOOK] and the gentleman from Maine [Mr. FRYE] quote my report as approving of the practical operation of that law in 1876, and infer from that year a general approval, they confuse themselves, and mislead the public. With such an interpretation of that report, the many compliments which have been given to me for my honesty in making it are meaningless, if not hollow. While I thank the gentlemen for their good opinion, I will put it to the test further. In that report I stated that whatever may have been the opinion about the conduct of elections in these cities, or however they may be conducted in the future, that election of 1876

will stand as a monument of what good faith, honest endeavor, legal forms, and just authority may do for the protection of the elective franchise. This was an indication of what had been done before under that supervisors law. It was a premonition of what might be done in the future. I have shown what had been done before 1876. The committee appointed to examine into the election of 1878 have shown you what was done since 1876.

NATURALIZED CITIZENS PROSECUTED, AND WHY.

It will be observed that most of the proceedings in 1878, taken against the electors in New York by Davenport, were aimed at the naturalized citizens. According to the census of 1875, the number of males over twenty-one in New York City were as follows: Naturalized citizens, 141,179; native-born citizens, 90,173; aliens, 48,305; total, 279,657. It is well known that the large majority of these naturalized citizens were democrats. How were they to be stopped from voting? What mode of arrest or intimidation could be used to produce this result? That was the problem which Davenport undertook to solve.

I dwell upon it because it concerns every part of the country. The second section of the Constitution of the United States, in fixing the qualification of electors in each State, requires only that they shall be electors of the most numerous branch of the State Legislature. In the various States of this country, there are various provisions as to suffrage of naturalized citizens. Let it be remembered that there are no Federal elections. They are all State elections, and it is an anomaly for a United States supervisor or marshal to carry out State election laws. When these laws, therefore, in our States allow simply a declaration of intention on the part of the alien to make him a voter, as in Colorado, Georgia, Kansas, and Nebraska; or a residence of six months, as in Alabama, Arkansas, Missouri, Florida, Indiana, Oregon, Texas, and Wisconsin; or a residence of twelve months, as in other States, to qualify the foreigner who is a citizen, is it not unjust to give to a Federal officer the power to discriminate against the naturalized citizen, under some supposed power in the Federal Constitution? All such laws, therefore, as interfere with elections or with the elector and his qualifications or his certificate of naturalization are unconstitutional. When, therefore, Davenport conceived the idea of disfranchising New York, he struck at the certificates and upon the ground that fraud had been perpetrated in 1868 in granting naturalization. He made it a pretext for a general raid on all naturalization from 1858 to 1873. The boldness and extent of this *coup* is understood, when I say that, under the law and by the method of naturalization in the courts of New York City, forty thousand citizens, including over one thousand women, had been naturalized between these years.

The inconsistency and iniquity of this attempt to render null the naturalization of so many thousands is so well stated by Judge Freedman, in his decision on the application for an order *nunc pro tunc* to perfect the record, that I quote from it:

> That sovereignty has a right to command his person, his time, his property, and to establish the condition of his domestic relations and the rule of succession for him and those dear to him, is a vital question for every man. What civil and political rights he possesses, and to what sovereignty he must look for protection, depends upon his status as a citizen. If these forty thousand persons did not legally become citizens of the United States, and by virtue thereof citizens of their respective States, the title to real estate of the value of many millions of dollars may hereafter be drawn in question. On the other hand, certainty of citizenship is of equal importance to the Government. If these forty thousand persons did not legally become citizens none of them can be held subject to military or jury duty by the Federal or any State Government.

> The decisions of all courts favor proceedings to admit aliens against technical and snap objections, (7 Cranch., 420; 13 Wend., 534.) This is in the interest of that immigration which George III tried to hinder, which has given to our country so much of its courage, prosperity, and glory.

CERTIFICATES OF 1868 AND THE RECORD.

If these certificates were not correct their holders were aliens. Their right to hold property and vote was thus put in peril, if not entirely nullified. The pretense was, that there was no record of such naturalization at that time in the supreme and superior courts of New York; but only a memorandum in an index book. The papers were on file, depositions were taken, and the law complied with in so far as the alien could do it. Every duty devolved on the applicant was complied with. The record was made according to the very language of Judge Daly, in the article on naturalization in Appleton's Encyclopedia. The papers of these cases were a sufficient record.

But this matter not only had a judicial interpretation by Judge Freedman, but by a Federal judge, Blatchford. Both held that the applicant for citizenship was not responsible for any non-compliance, in making up the record; and that though some of these naturalizations were irregular, none of them were void. The same practice had obtained to some extent in United States courts; but no notice was taken of that by Davenport in his preparations for arrest.

Never before 1878 had any legal proceeding been attempted to test the validity of the naturalizations of 1868. No person was ever arrested or tried for having the certificate of that year. This commissioner unblushingly testifies that he had stricken from the registry as many voters having 1868 certificates as to reduce the number from 40,068 to 10,056!

ILLEGAL PROCEEDINGS, 1878.

In 1878, he began proceedings against all who held these certificates, because they had voted on them illegally in 1876. He had not thought of testing the validity of these certificates in 1876, and he had sworn, before the committee of which I was chairman, that the election of New York was the best ever held in that city! He began his attack upon these holders of 1868 certificates in May, 1878, through one of his clerks, who made the affidavit. He began it with an omnibus complaint covering over five thousand persons, and issued his warrants. But he forgot, in his zeal, that it was illegal to unite in one complaint so many charges, and they were withdrawn. In June, 1878, his creature, one Mosher, swore to twenty-eight hundred separate complaints against persons who were registered in 1876. He disregarded the authority of the district attorney and the advice of the Attorney-General. On June 15, 1878, he was told that he could not prosecute in order to destroy the certificates or to prevent voting; nevertheless the warrants were issued. His object was to frighten the voters into giving up their certificates. This he boasted of having accomplished. Not content with this, he published in the newspapers notices, which had the effect of a threat against the voters, and by all sorts of devices and frauds obtained the surrender of three thousand certificates. Many who held them have made affidavit that they were obtained under false pretenses, namely, that new ones would be furnished or that it was merely an examination as to their validity.

He went so far in the case of Albert Pohls as to take from him his framed certificate because it was obtained in 1868. Pohls had served four years in the Army, and on his discharge was properly naturalized. He had voted ten years on this certificate. This conduct was harmless compared to the arrests I have referred to. Some of these tyrannical acts are without example in the history of government. Davenport did not put any one to death, but I assert, on the best authority, that the outrageous incarceration of a large number of weak and delicate men resulted subsequently in their death.

The democratic party in New York undertook to countervail the action of this officer. They took the position of Judges Freedman and Blatchford. Finding it impossible to be reconciled with Davenport, as in 1876, they gave public notice to all persons having doubts about the validity of their certificates, or who had been imposed upon, to call and have their cases investigated, and to take steps to be renaturalized. I will not rehearse the various instructions and schemes by which some thousands of certificates were taken from persons who made application to register. Some of these were men who had fought in the Army and who had been properly naturalized, and yet by intimidation, fraud, and force this superserviceable, subordinate Federal officer seized the certificates in spite of the decisions of the courts, and thus deprived our people of their most transcendent right. For this deprivation, by the common law, he is liable to each of them in a civil action. It was nothing less than perjury for Mosher, the creature of Davenport, to have made the affidavits on which to issue the warrants against these naturalized citizens.

Efforts have been made to procure the names of the fourteen hundred men who were hired, last year, by our money, to intimidate and imprison the voters of New York City; but in vain. Were they any better than the irresponsible tatterdemalions selected in 1870? Where do they live? Are they jail-birds, thieves, shoulder-hitters? What are their antecedents? We ought to know the instruments created by this law.

The court laid down the idea, which is expressed in the law itself, that these holders of certificates must have guilty knowledge that they were invalid or fraudulent. No crime could be committed in connection with them except upon the *scienter*. Yet this tyrannical conduct was based upon the loose proposition that all the naturalizations of 1868 were fraudulently made and had no record; and this, too, although the court decided that there was a sufficient record, and although the United States district attorney himself, testified that many cases of arrest were men who were imposed upon and had no guilty knowledge. Still the raid went on, until just before the election, when, without notice to the district attorney or any one in his office, thirty-two hundred complaints were made by Mosher on the 3d and 4th of November. On the Sunday and Monday preceding election, these thirty-two hundred warrants for the arrest of those having a certificate of 1868, were issued.

These certificates were not, as I say, illegal, because of the record. This Judge Blatchford pointedly decided in the Coleman case. Notwithstanding that it had been the custom for fifteen years, in the highest courts of New York, presided over by eminent and honest judges of both parties; notwithstanding there was no guilty knowledge on the part of the naturalized citizens; notwithstanding many men had been soldiers, who had been naturalized in all proper ways,—many thousands of these men were intimidated by the general seizure, and never appeared to vote. Many, when they appeared, were at once dragged to the post-office building, and imprisoned as I have stated. Many were brought before the United States commissioner or the republican headquarters and released on a promise not to vote; and thus this forced, cruel, and vindictive execution of a Federal law went on. Of the three thousand two hundred persons of this registry for whom warrants were issued, only one thousand two hundred and forty voted; and it is claimed that only six hundred and sixty were arrested. But it is also claimed, with more semblance of truth, that

thousands were prevented from voting by these unexampled proceedings.

It is not necessary to describe the mode by which men were prevented from voting by their arrest. Even when ample bail was offered the commissioner took twenty-four hours to consider. His object was to prevent voting.

The iron cage, Mr. Speaker, is no myth, though republicans make light of it. It was the place for the detention of criminals who are tried in the United States courts. It generally contained, during that time, some thirty persons, including filthy, drunken, and boisterous prisoners. It was crowded beyond its utmost capacity on election day; and among the arrested were not only mechanics and merchants,—men of the highest respectability, but men who had fought for the country throughout the whole war.

It may be that this law might be so executed as to give some satisfaction, as was the case in 1876; but it was done then simply because of the fear of bloodshed between the militia and Federal troops, and a general agreement such as I have heretofore described. But on the same principle the rack, the red-hot plow-share, and other kinds of ordeal and torture can be justified. It is only a difference in degree and practice, not in principle. On the same principle the fact that a jury which gives a verdict under fear, can be justified. On the same principle, a despotism tempered by moderation at times may be more dangerous than a despotism which has no element of goodness in it. The one rudely dethrones the people and the other insidiously relaxes and enervates their votes and their energies.

To hear gentlemen talk one would suppose that they held it to be the primary duty of Government to protect the people by such schemes of cunning and force, against themselves, and that, too, when exercising the highest privilege.

CONSTITUTIONAL AND LEGAL DIFFICULTIES—ARREST ON SIGHT.

There is more danger in this system, which may be summed up in section 5222 of our Revised Statutes, than in all the uses of the sword. Observe this section, for it may be the turning point of the veto of this legislative appropriation bill:

SEC. 5522. Every person, whether with or without any authority, power, or process, or pretended authority, power, or process, of any State, Territory, or municipality, who obstructs, hinders, assaults, or by bribery, solicitation, or otherwise, interferes with or prevents the supervisors of election, or either of them, or the marshal or his general or special deputies, or either of them, in the performance of any duty required of them, or either of them, or which he or they, or either of them, may be authorized to perform by any law of the United States, in the execution of process or otherwise, or who by any of the means before mentioned hinders or prevents the free attendance and presence at such places of registration or at such polls of election, or full and free access and egress to and from any such place of registration or poll of election, or in going to and from any such place of registration or poll of election, or to and from any room where any such registration or election or canvass of votes, or of making any returns or certificates thereof, may be had, or who molests, interferes with, removes, or rejects from any such place of registration or poll of election, or of canvassing votes cast thereat, or of making returns or certificates thereof, any supervisor of election, the marshal, or his general or special deputies, or either of them; or who threatens, or attempts, or offers so to do, or refuses or neglects to aid and assist any supervisor of election, or the marshal or his general or special deputies, or either of them, in the performance of his or their duties, when required by him or them, or either of them, to give such aid and assistance, shall be liable to instant arrest without process, and shall be punished by imprisonment not more than two years, or by a fine of not more than $3,000, or by both such fine and imprisonment, and shall pay the costs of the prosecution.

Observe the enormity of this section! All who obstruct, hinder, assault, bribe, solicit, interfere or prevent the execution of the law, in the various ways enumerated, or who threaten, attempt, or offer so to do, or refuse or neglect to aid and assist in the execution of this odious law, are liable to instant arrest without process, and punishment without trial! Not alone is this a violation of our fundamental law, but of every local and State law to protect the freedom of elections and to keep the peace. Where is the limit to the ferment, turbulence, violence, bloodshed which such instant arrest, on sight, without warrant, brings upon the community? No worse tyranny was ever enacted for the perpetuation of power and the wreck of suffrage.

DIVIDING LINE BETWEEN STATES AND FEDERAL GOVERNMENT.

The Constitution is violated in this way in every degree. The States themselves, *pro hac vice*, are destroyed. Let us make no concession to wrong, even the least. One wrong draws to itself another. The least wrong establishes the precedent.

Is this interference by Federal legislation in elections, justified by the first section of the fifth article of the Constitution, whose terms are "The times, manner, and places of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but Congress may by law make or alter such regulations, except as to the place of choosing Senators?" I will not add to the elaborate discussion growing out of this clause, but shall simply state some considerations pertinent to and illustrative of it, by the conduct of the Federal officials in the city of New York:

First. This clause was intended to empower and command the State Legislatures to provide by law for choosing Federal Representatives; the system of the Government being founded upon the idea that the Senators would represent the States as organized political bodies, and the Representatives the people of the States as individuals. The two Houses thus became representative of the State.

Second. The States were required to enact that authority as to the time, place, and manner of holding elections. The time and place were requisite in order to render uniform the action of the States. The word "manner" was used to comprehend the method of voting as by ballot or otherwise, and so that the local returns could be verified, and hence,

Third. The propriety of placing this power to effect this representation in the State to be represented. The admitted power of the States to prescribe the qualifications of voters carries with it the right to prescribe the election machinery and the officers to hold elections, free from Federal interference, civil or military.

Fourth. Congress could only exercise this authority when the States failed and the necessity arose.

Fifth. Only where the States were guilty of neglect or where there was unfair legislation might Congress make "regulations," and then the congressional power was always subordinate to that of a State.

Sixth. There is no State in the Union that has not made the provisions required by the Constitution. Every State has its own election laws, so as to perpetuate representation in Congress. Therefore, the whole subject is exhausted, and Congress has no right to interfere.

Seventh. Congress cannot intervene to create offenses, to be punished by the Federal courts by additional penalties, when the States have already attended to that matter; nor can Congress make laws to keep the peace of the State, or protect voters, without the constitutional request of State authorities.

Eighth. If Congress has any control over the manner of holding the elections, its power should be exerted to keep all troops and civil officers, who arrest without warrant, away from the polls, under that constitutional authority. This power, in connection with congressional control over the Army itself, may be exercised as to Federal soldiers and other creatures of the Federal Government. Chief-Justice Marshall, in 1800, when a member of Congress, proposed to do this very thing as to troops, in a bill which then passed this House.

Lastly. This supervisor law virtually repeals the fourth and fifth articles of the amendments of the Constitution. These provide that no process to arrest shall be issued without probable cause, supported by oath, nor shall any person be deprived of liberty without process. Yet passion, prejudice, or caprice are allowed by this law ample verge for their gratification. Arrest may be made on suspicion only. When arrested, the officer may whisk the suspected person far from fireside, family, and neighborhood, and thus attain a double object; first, by getting big fees, and, second, by depriving the arrested man of his vote. This enforcement law, moreover, gives to these judicial constables a power the more alarming because masked under the forms of law. There is no remedy from the State authorities, and no compensation for the outrage to the aggrieved. But at the same time the Federal officer, even if a murderer or a burglar, by the same law, is protected from arrest, although indicted by State authorities.

THE LAW NOT EXPEDIENT.

If the power to enact such a law exists under the Constitution, it is not expedient that it should be enacted; first, because the officers under it are not responsible to or elected by the people; second, because it is a burden of expense unnecessary and wasteful; third, because it foments dangerous collisions between Federal and State authorities; fourth, because it is an invasion of domestic and local interests and authority; fifth, because it is the use of simple force, which is unintelligent, to stifle the informed will of the citizen; and, lastly, because for the first eighty years of our Government it was never exercised or believed to be right and constitutional.

AUTHORITIES.

These are not mere assumptions; they are founded on the best authority. Judge Story, in his Commentaries, acquiesces in the doctrine of Madison and Hamilton in Nos. 52 and 59 of the Federalist, when he says: "What would be said of a clause introduced into the National Constitution to regulate State elections of members of the State Legislature? It would be deemed a most unwarrantable assumption of power, indicating a premeditated design to destroy the State government. It would be deemed so flagrant a violation of principle as to require no comment."

The wildest and widest construction of the Constitution, even by such a stickler for Federal power as Hamilton, is that no man would hesitate to condemn an article of the Constitution empowering the United States to regulate the elections for Representatives in States. He called such a supposed article an unwarrantable transposition of power and a premeditated engine for the destruction of the State government. Madison believed that it was not possible for the convention to have made a standard of electoral qualifications, uniform or different from that already established or which might be established by the State itself.

OUR DUTY.

What was our duty when such attempts to stab State rights, and to repeal by Congress the Constitution itself, were made? Plainly to resist such legislation here, by all methods known to our rules. This the small minority of 1870 and 1871, led by Mr. Speaker Kerr, did. What was the duty of the States when such laws were forced on their unwilling people? Rebellion against Federal authority? No. Judicial interpretation? That was tried; but in the South, where the stir of a leaf was monstered into a Ku Klux Klan, even such civil modes of relief were of no avail. But in the Empire State, with her democratic governor and her well-trained National Guard, notice was served that this usurping Federal statute, if exe-

cuted at all, must not be used as an instrument of intimidation and oppression. Thus was the Federal power bridled, but it has not yet been destroyed. This is reserved as one of the trophies of the democracy!

I have stated the propositions and authorities which justify a thorough overhauling of the Federal system which would interfere in the elections of a State, either by laws like those of the supervising statutes or by the use of the Army.

FRENCH PREFECTS AND FEDERAL SUPERVISORS.

The very practice which is contended for by gentlemen is that which demoralized the third Napoleon. It was the practice of the French government to send out its favorite candidates to the prefectures, and under government auspices, and from the central power at Paris direct and control the elections of the people in different localities. Since then, the Republic of France has been organized, and during the administration of McMahon, the French Chamber has boldly unseated many deputies, because the government sought to override the popular will by its central agencies. That abuse of central power led to the downfall of the McMahon ministry. Let gentlemen on the other side be warned by the example!

ABUSE OF JUDICIAL FUNCTIONS WORSE THAN FORCE.

But, Mr. Speaker, the supervisor system is more odious because more insidious than the military, to affect elections. It is especially so in this country, where the standing army is small compared with the mass of voters. Among a people like our own, so scattered and so deferential to law, and with such simplicity of manners, the judicial power, in any of its phases, seems of greater importance than the military or the legislative. Servitude or freedom depends more on the administration of justice, in a country like ours, than upon the bad use of force or the mischievous acts of the Legislature. It was not so much by the aid of mercenary soldiers in Great Britain as by the aid of lawyers and judges, that tyranny was temporarily intrenched there.

THOROUGH REPEAL DEMANDED.

Mr. Speaker, I was not able to have any share in the debate which has occurred during this extra session upon this subject. Hence, an apology is needed for so long and late an exposition. Besides, I had already opposed many of these obnoxious measures when they were proposed here and the theme was somewhat threadbare. But, sir, in reaching my conclusion, let me ask: where is the justification of these laws against a free ballot, including the jurors' test oath? How is it that they are intended to guard against fraud on the franchise? Admitting that there were and are frauds on the franchise, admitting that both parties have been now and then inculpated in them, yet how inconsiderable are the wrongs connected with such frauds in comparison with the mutilation of the franchise itself, by usurping civil officers and the hand of force or the destruction of the jury system by an odious test oath?

For myself, and speaking for my constituents, who have been outraged, I would leave no vestige of that legislation, not one scintilla, not even the supervising observers, with their *ex parte* examinations and power to arrest. Let us cut them all up—the whole of the system, by the roots—every fiber of it! Until it is thus eradicated, let us obey the traditions and laws of legislative freedom, and withhold supplies till our land is free from these tyrannies. We temporize only when we leave a remnant of this monstrous system. We detract from the rights of the States over this subject when we allow even hired Federal witnesses, selected by Federal courts or supervisors, to stand around with their badges of Federal authority at polling places. If peace is to be kept at the polls, as gentlemen seem to desire, let peace be kept. But by whom? Let the States keep the peace. It is theirs to do it. Federal legislation, in whole or in part, as to elections is utterly subversive of local autonomy. It should be utterly destroyed, and forever!

THE CIVIL ABOVE THE MILITARY.

Mr. Speaker, let me say that I do not attack the motives of any one who defends such a system of usurpation, violence, and wrong. But may I not copy the sentiment, if not the words, of a great orator in a crisis like this, when I say, that it would be puerile, nay, it would be hypocritical, for us to go on misgoverning and to pretend to hope that the results of good government will follow and to assume that those whom we treat as aliens, like our naturalized or southern friends, ought to feel toward us as brothers. Gentlemen opposite seem to oppose agitation and yet multiply the grievances by which agitation is alone supported and by which it was originated. They raise the cry of fraud, coercion, and revolution when we only call for a repeal of these odious war measures, test oaths, and supervisor statutes, and at the very time when they are taking steps for an election by unrepublican modes and coercive methods, in 1880, to annul all our dearest rights and privileges, without which our Union and Constitution are but an empty name.

Let us heed the farewell words of the Father of our Country, who warned us against the supremacy of the military above the civil power, and whose highest eulogy by the great Irish orator, Curran, was that when Liberty unsheathed her sword, which necessity had stained, Victory returned it to the scabbard; so that Washington became more than soldier—the splendid exemplification of all the civic virtues!

The Republic will Survive the Horrors of Starvation.

SPEECH OF HON. J. W. CALDWELL,

OF KENTUCKY,

IN THE HOUSE OF REPRESENTATIVES,

Saturday, April 26, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. CALDWELL. Mr. Chairman, when the bills making appropriations for the support of the Army and to defray the expenses of the legislative, executive, and judicial departments of the Government for the fiscal year ending June, 1880, were being considered in the Committee of the Whole of this body, I did not engage in the long, able, and exhaustive discussions on their political features which then occurred, preferring to give place to gentlemen of larger legislative experience, who by length of service here had the ear and the confidence of the country, and stand aside that such as desired to do so of the new members, who had not witnessed or participated in the lock of the two Houses in the Forty-fifth Congress, might have an opportunity to take part in the debate, and for the additional reason that I had but recently (during my last canvass) discussed two of the questions at issue, and knew that my sentiments and convictions were so thoroughly known to my constituents that my silence would not be misinterpreted or my vote on either bill remain for a moment a question of doubt.

The changed circumstances now surrounding these questions, growing out of the unwise, unpatriotic, and unconstitutional course of the Executive, justify me in trespassing for a short time upon the patience of the House and asking its courteous indulgence while I place upon record for the benefit of my constituents, and not with the hope of influencing the action of any member of this honorable body, the reasons which controlled my course in the past and will guide my future action upon these grave and important public questions

For the past ninety days the able, adroit, and distinguished leaders of the opposition have made a combined, vigorous, persistent, and determined effort to startle, disturb, and arouse the country with the wild, reckless, and inflammatory cry of revolution, a word at all times and under all circumstances, when used by semi-official authority, full of dangerous significance; with which not only the careful student of political science but the most casual observer of public affairs and the most indifferent of historians necessarily associates sudden and dangerous changes in governmental policy, the overthrow of the state and the paralysis of civil power, attended by great popular upheavals and the clamorous cry and destroying march of the hydra-headed mob; a word fitly chosen in this connection by the artful and scheming political strategists, who would even mar the peace and retard the progress of the country to secure a party advantage, to awaken the apprehensions of the more conservative classes of society, stimulate the dormant passions of a past sectional strife, and cram the public mind with a feeling of eager expectation and anxious solicitude.

This party shibboleth of honorable gentlemen on the other side of this Chamber is the manifest result of caucus action, to divert public attention from the great questions at issue in this extra session of Congress, to conceal from the scrutinizing gaze of the people the putrid wounds and bruises of the body-politic, to arrest if possible the decay of republican supremacy, and with the vain hope of winning back the forfeited confidence of an honest, virtuous, and intelligent public opinion, and perchance obtain for the republican party a new lease of power, under which to renew its insidious attacks on State autonomy, continue its efforts at consolidation, and ultimately change the whole organic structure of the Government in its distinguishing features of State and Federal institutions, with the purpose of building upon the ruins of our dual system of polity, which is the grandest fabric ever erected by the genius of man, a great consolidated nationality, under the dark and baneful shadows of which State institutions would wither and die and their supreme authority to preserve the peace of society and protect their citizens in the highest act of sovereignty, the exercise of the elective franchise, be entirely overthrown and their functions in these respects be usurped by the appointees of this autocratic consolidation, clothed with plenary authority to arrest the citizen at will and call at pleasure to aid this monstrous usurpation, the subservient mailed hand of military power.

Wherever the telegraph has carried the daily news of congressional proceedings, there this mad delusive charge of revolution, conceived in political trepidation and born of partisan ingenuity, has been heard. And since it was first uttered here it has been daily and hourly revamped by the heated editorials of a powerful and almost omnipotent partisan press. Everything has been resorted to which would give color and currency to the charge, or aid in any way in carrying conviction of its truth to the public mind. Notwithstanding the fact that most of the repeals placed upon the Army and the legislative, executive, and judicial appropriation bills were first demanded by northern Representatives whose loyalty and devotion to the Government have never been doubted, still the action of the majority has been denounced with an assumed patriotic fervor as a

rebel conspiracy to break up the Government. Notwithstanding the fact that all these repeals have been ably advocated and powerfully urged, in arguments cogent with reason and full of the spirit of loyalty to the Government, by Federal soldiers sitting upon this side of this Chamber, who in the hour of the Government's peril from disunion were among the first, the truest, and bravest of those who marshaled its armies and followed its flag to battle, still the course of the majority has been represented as an attempt to effect by starvation what it failed to accomplish by war.

Not an unguarded expression has fallen here, in the heat and excitement of debate, that has not been seized upon with avidity as legitimate and conclusive evidence of hostility to the Government, and a prurient partisan ambition has perverted its meaning and magnified it an hundred fold for the base purpose of manufacturing party capital. Garbled extracts from speeches delivered here in the open light of day, which, taken in their connection, were not only inoffensive to the most delicate sense of loyalty, but full of patriotic devotion to the liberties of the people, and such as every manly and faithful representative ought to utter, have been commented upon with a total want of fairness, an absolute disregard of candor, and an illy disguised sophistry, for the purpose of inflaming the Northern mind and impressing it with the belief that it was the open and avowed intention of southern representatives in the future legislation of the country to reverse the established and logical results of the war, which none of them have ever questioned or denied, and which all alike feel bound in honor and good faith, as well as by oath, to observe and defend. To impress the public with the truth of the charge of revolution and bolster up the tottering fortunes of the republican party, all the stalwarts of that once great and powerful organization have been summoned to the front. Personal feuds of long standing and rivalries for public honors involving the suffrages of the nation have been temporarily suspended. Bickerings and internal strife growing out of the bestowal and distribution of Government patronage, which of right, by the overwhelming verdict of the people, belonged to the democratic party, have been suddenly hushed and quieted.

With a perfect avalanche of words, a magnetism rarely equaled, a stage action never surpassed, and after the manner of the sorceress of Endor, or the vain Welchman who boasted to the incredulous Hotspur that he could "call spirits from the vasty deep," even the ghostly arm of a martyred President has been invoked to arise from the tomb and wither and blast forever the guilty souls who dared to contemplate the repeal of a law which in a time of war received his signature and sanction. In this hour of party emergency each sulking Achilles has been called forth from his tent to herald with the imperious manner of a goddess born the return of the iron hand of military rule, pronounce an Iliad of woes upon his country as the result of democratic supremacy, flaunt in the face of a long-disgusted public the stale charge of treason, and, with a knightly valor and heroism worthy to live in song and romance, impale upon his parliamentary spear the trembling and affrighted ghost of a rebellion which has been dead and buried for fourteen long years.

Yes, sir, there has been a union of hands and a uniting of forces, from the priestly politician down to the dirtiest scullion that has fattened upon the corruption of government, to sound and spread abroad this false alarm. As the result of all this fustian and rant, declamation and sophistry, the dominant party in the legislative department of the Government stands charged at the bar of public opinion throughout the country with the crime of revolution, with the determination to coerce the Executive, or failing in that to starve the Government to death. And the President, throwing himself body and soul into the hands of the scheming politicians, who seek to overthrow our form of government, has attempted by his inconsiderate, arrogant, and dictatorial messages to this House to color, propagate, and strengthen these false charges. Fortunately for the peace, well-being, and tranquillity of the country, *pari passu* with these grave charges against the majority here, there went to the public its just, able, and powerful defense, founded upon the solid marble of constitutional guarantees, bristling with precedents running through a long series of years, and adorned with the grand traditions and certified acts of the free, liberty loving, and historic race, from which we are descended, whose institutions and laws we partially borrowed and have greatly perfected by our own statesmanship; and the gratifying consequences are that the confidence of the people in the wisdom and patriotism of the democratic party is unshaken and the tranquillity of the country has remained undisturbed.

In opening the debate on the Army bill one of the leaders of the opposition said:

> We recognize the other side as accomplished parliamentarians and strategists, who have adopted with skill and adroitness their plan of assault.

It did not require all the mental activity and keen political sagacity of the distinguished gentleman from Ohio, [Mr. GARFIELD,] who I believe to be the ablest parliamentary leader in his party, to make the discovery I have quoted.

The merest tyro in Anglo-Saxon history, the shallowest student in sound governmental polity, and he who knew least of the temper of the times, of the hopes and fears, of the intelligence and patriotism of the people of this great country, who know the value of the safeguards of liberty, would have developed the fact as easily as that gentleman seems to have done, that this line of legislative battle was pitched by the majority on carefully selected ground.

Sir, if we cannot trust the people to sustain us in demanding for every citizen a fair and an impartial trial by an unpacked jury of his peers, upon what issue can we appeal to their justice, intelligence, and patriotism? If we cannot look to the country for a complete vindication for demanding for all the people of the Republic a free ballot, unawed by the clank of the saber and the gleam of the bayonet, where shall we look for an issue that will merit its support and approval? If we cannot demand for all the States of this vast Union the supreme right to interpret and enforce through their own judicial and police officers their own organic and statutory laws, prescribing the necessary qualifications for, and regulating the peaceful exercise of, the right of suffrage by their own citizens, what, I ask, is left of the reserved rights of the States and the people?

Sir, when the country rebukes us for making and insisting on these wise, just, and necessary demands, which form the very shield of personal liberty, constitute the barrier to the invasion of State autonomy, and partially mark the dividing line so wisely drawn by the founders of the Government between State and Federal jurisdiction, we had as well furl forever the old democratic flag which has been flying for three-quarters of a century, expunge from the pages of American history all the noble and heroic acts of that old and honored organization that formed the basis for the progress and development of this western world and which built by its defense of public rights "a government of the people, by the people, and for the people," and go in spirit to the grave of its great apostle (Mr. Jefferson) and with shamed faces, craven hearts, and bated breath say to the restless and perturbed soul of the immortal dead that republican government is a failure, that the people are not capable of self-government, and that the prophecy of Macaulay in criticising the work of his statesmanship will be speedily realized, and that the day is not distant when the sweating and toiling millions of America will become the willing bondsmen of a bloated aristocracy, with wealth plundered from the people who will exercise the governing power of the country, not by reason of superior virtue, honesty, and intelligence, but through the iron sinews and pitiless soul of military domination. It was asserted in the course of debate on the legislative, executive, and judicial appropriation bill that the questions sprung by these repeals were the very questions in part settled by the war. This is not true. If it was, I would be the last man on this floor who would willingly disturb them. Let the war, with its dark chapter of errors and crimes, bloodshed and devastation, sacrifices and aggrandizements, criminations and recriminations, be forgotten in our legislative councils; or, if we are forced to deal with it in any way, let moderation, dignity, and respect for the brave men of both sections who staked their honors, fortunes, and lives in defense of their convictions mark the bearing and language of the American legislator. He who would reanimate the sectional passions and prejudices of that period of our history, whether he be from the North or the South, is the slave of sectional feeling, an enemy to his country's progress, and a traitor to the rights of posterity. I have long believed that

> He whose hands the lightnings form,
> Who heaves old ocean and wings the storm,

settled that great and terrible conflict for purposes of his own, as yet partially hidden in the womb of time, adversely to the South. Speaking for myself, and, as I believe, for the people of that section, I here declare that there is not one of the results of the war that we would willingly see disturbed, and the same zeal, courage, and fidelity that signalized our support of the confederate cause and its flag we freely, willingly, and cheerfully tender to the Government of our country and its flag which floats above this Capitol. The war was waged to preserve the Union, to overthrow the doctrine of secession or the asserted right of a State to defeat the execution of the supreme law of the Federal Government by dissolving its connection with the Union. As a logical result of the war, the black man was enfranchised and elevated to citizenship, and the political sequence that his right to vote should not be "denied or abridged on account of race, color, or previous condition of servitude" necessarily followed from his changed relations to the State, and from the very genius of our institutions. These were the only questions settled by the war, except that in case of such a conflict the primary allegiance of the citizen was due to the Federal and not to the State government. And here I wish to remark that, believing that allegiance and protection are reciprocal, and that where allegiance had been observed, to disregard the constitutional provision "Nor shall private property be taken for public uses without just compensation" rendered that solemn guarantee utterly nugatory and worthless, explains the action of many southern representatives on the much-vexed question of war claims, for which they have been so hypocritically censured and basely maligned by the republican press of the country. The honorable gentlemen from Ohio, [Mr. GARFIELD,] who was chosen to lead the vanguard of his party in sounding the charge of revolution, &c., said:

> Our theory of law is free consent. That is the granite foundation of our whole superstructure. Nothing in the Republic can be law without the free consent of the House, the free consent of the Senate, the free consent of the Executive, or, if he refuse it, the free consent of two-thirds of these bodies.

Having laid his proposition broadly and boldly, he then asked, "Will any man deny that?" In theory the proposition is correct, but in practice it is almost entirely reversed; for all our laws, at least to

a great extent, are the result of a compromise of conflicting views between the House, the Senate, and the Executive. Upon the theoretical proposition I have quoted, as to the consent necessary to make a law, the cry of revolution against the majority here has been predicated. Under the belief that it will insist in the disagreement between the two Houses of Congress and the Executive in the matter of these appropriation bills; that the Executive shall give way to the demand of the people, as expressed through two of the three powers whose consent is necessary to make a law, rather than that one of the three, and that one without legislative power and only vested with a qualified authority to obstruct legislation, shall control the matter in dispute between the three, I submit that the position taken that the course of the majority is revolutionary is not tenable, that it is a quagmire of sophistry without a "granite foundation," and when tested in the crucible of reason, in the light of the powers conferred by the Constitution both on Congress and the Executive, reverses the conclusion the minority have drawn from the premises, and fastens upon the Executive and his abettors, if anywhere, the crime of revolution.

That the unconstitutional laws which the Executive and his party insist shall remain on the statute-book are dangerous to liberty and subversive of the Constitution I do not honestly for one moment doubt. In letter and spirit they are at war with all our past legislation, and neither the necessity for them nor the authority to pass them was ever claimed in the history of the country for three-quarters of a century. The determined effort made by the President and his party friends to retain these laws as a part of our code manifests a settled purpose on the part of the leaders of the republican party to war on the Constitution and crush out our present form of government. And to me, sir, this is an aggravated case of revolution under the guise of keeping the peace at the polls, and sending Federal officials into a State to construe its organic and statutory laws, when its citizens go to the ballot-box to determine who their Executive and law-makers shall be.

I would not make this charge against the honorable gentlemen who sit on the other side of this Chamber, and the Executive of the nation, who by reason of the elevated position he holds is entitled to my respect, if not to my confidence, unless I believed it had at least the semblance of truth. To me, sir, this is a dangerous crisis in our history, and solemn and weighty are the responsibilities resting upon us all. The issues at stake are not less in my judgment than the independence of the legislative department, the perpetuity of our form of government, and the liberties of the people. For the first time in our history an Executive has vetoed an appropriation bill, and in all the mutations and changes of our laws, during the growth and progress of a century, for the first time the repeal of a law has met with the obstruction of the veto power. These facts of themselves almost have the semblance of revolution, but when taken in connection with the outrage on popular rights in 1876 by the President's party, manifest to my mind a determination to repeat the crime of that year by again using the Army to overthrow the will of the people and subvert the Constitution of the country. The logical declaration of the President and the minority is, that Congress must consent to retain on the statute-book laws which it believes to be unconstitutional, which are a continual menace to liberty, and a palpable invasion of the supreme right of the States to keep the peace within their borders, or the Army shall disband or be supported without an appropriation, and the legislative, executive, and judicial departments of the Government shall die of starvation. I know not what others may do, and I shall not attempt to criticise in any way any gentleman's course in this hour of responsibility, but, sir, I feel that when I yield to this demand of the Executive and the minority and sacrifice my convictions of duty to my constituents and to my country that I ought to be lashed naked through the district I represent by the people whose rights I have deserted and whose confidence I have betrayed.

It is claimed that it is an act of revolution to ingraft general legislation on an appropriation bill and to insist that this legislation with the appropriation shall become a law. To me this position is wholly without foundation. It would be revolutionary no doubt to insist in this way upon the passage of unconstitutional laws; but no one has claimed that any of these repeals are a violation of the organic law or invade in any way the constitutional rights of the Executive. While it is the duty of Congress to make the necessary appropriations to carry on the Government, it occurs to me that it is the duty of the President to accept them, unless there is coupled with them legislation which invades either a constitutional right of the Executive or is unconstitutional in some other respect. I deny the constitutional power of the Executive to veto an appropriation bill for any other reasons than those named. Where would the opposite doctrine lead? Most assuredly to the destruction of the independence of the legislative department of the Government. Suppose the President when an appropriation bill is sent to him for approval, either for the support of the Army or for any other purpose, should return it to Congress with his objections to its becoming a law because it was inadequate in his opinion for the purposes for which it was intended to be applied, and it could not be passed over his veto by a two-thirds vote, will any gentleman claim that it would be an act of revolution to refuse to increase the amount at executive dictation. If it would, then a little over one-third of both Houses and the Executive may make the expenses of the Government just what they please, and the will of not only the majority but almost two-thirds of the people and the States, as evidenced by representation in both branches of Congress, would be utterly powerless to resist it. This idea is utterly subversive of the independence of the legislative department of the Government, and not tenable under any conception that I have of a constitutional exercise of the veto power.

It is claimed by the President and the minority that he constitutes a part of the legislative power of the Government. This claim is wholly without foundation; for article 1, section 1, of the Constitution confers all legislative power on the two Houses of Congress in the following words:

> All the legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

This language does not admit of a division of the legislative power between Congress and any other department of the Government. It is broad, comprehensive, and easily interpreted. The fathers of the Republic who framed our grand governmental chart did not understand the force of the language employed unless they intended to do what the section plainly declares, confer all legislative power upon the two Houses of Congress. If all legislative power is conferred upon the two Houses of Congress, it is difficult to comprehend how a residuum could be left to be exercised by any other department of the Government. This claim of legislative power for the Executive grows out of a misunderstanding of the nature of the veto power with which he is clothed by the Constitution, but which is not in any sense legislative in its character. It is simply an obstructive power, placed in the hands of the Executive to obstruct what he may conceive to be the enactment of unwise or vicious laws, unless the obstruction can be overcome by two-thirds of both Houses of Congress. To claim legislative power under the grant of the veto appears as absurd to me as it would be to claim for one who had a qualified right to object to the construction of or the removal of a building already erected the architectural skill and ability necessary to construction or removal by reason of this qualified negative. The early critics on our Constitution called this veto power the negative, and expressed the opinion that it would be rarely, if ever, employed by the Executive, and cite in support of this conclusion, even in their day, the disuse of an absolute veto power by the British Crown, and reason from this fact with great force that an Executive elected every four years by the people would be chary in using this power.

They overlooked the fact that their descendants have had the sorrow and shame to realize, that it was possible under all the safeguards of the Constitution for this negative power to be exercised by an Executive not elected by the people, and who would not be controlled in his employment of it by a sense of respect for and a feeling of accountability to this sovereign power, which they presumed would be a sufficient restraint to prevent its abuse. Could they have looked along the plain of American history to our day, their opinion that it would be seldom employed would doubtless have undergone a great modification, for they would have seen it repeatedly used and seldom for the purposes for which it was chiefly designed—"that of an immediate attack upon the constitutional rights of the Executive, or in a case in which the public good was evidently and palpably sacrificed"—but frequently, as in the instance of these bills, with the intent to thwart the will of the people, to perpetuate the power of a party, to overthrow the freedom of the ballot-box, to strike down the trial by jury, and ultimately to enslave the country. Our fathers believed that under our popular form of government this veto power would be used with calmness, deliberation, and a proper respect for public opinion. But the head of this administration has wielded it with almost as much freedom as a child handles his rattle, and shakes it over the heads of the Representatives of the people whenever his party requires it in a political emergency, or capital demands it to degrade and cheapen American labor or to protect the sanctity of its bonds from just and righteous legislation.

We have seen that all legislative power is conferred absolutely on the two Houses of Congress and that the veto power is not in its nature legislative. Now, by reference to section 5, article 1 of the Constitution we find that Congress is authorized to determine its own mode of legislation in the following grant of power:

> Each House may determine the rules of its proceedings.

The advice of the President to Congress as to its manner of legislation is therefore clearly gratuitous and trenches upon its authority to judge in its own wisdom and discretion as to the mode of its legislation. Forced into the position he holds against the solemn protest of the people by a party which, during its entire control of the legislative department of the Government, made a common practice of ingrafting general legislation on appropriation bills which was not in any sense germane to the subject-matter thereof, and numerous instances of which have been referred to here in the course of debate on these appropriation bills, (among others the creation of a court, the southern claims commission, to pass upon the constitutional rights of citizens by an amendment to an Army bill,) we respectfully submit that the lecture of the President to a democratic majority of Congress as to its manner of legislation not only trenched upon their exclusive right to judge on that subject, but was in exceedingly bad taste under all the circumstances.

The President declares that but for the repealing clauses put into these appropriation bills they would have received his sanction. The

objections, therefore, which prevented them from becoming laws did not arise from the want of sufficient sums to support the Army and to defray the legislative, executive, and judicial expenses of the Government, or from the manner of legislation pursued by Congress, but because of the repeal of certain obnoxious statutes made a part of those bills; or, in other words, because the use of the Army was restricted to the patriotic and constitutional purposes for which it was created, and has been maintained by a heavy taxation of the people for nearly a century, namely, the defense of the flag, to repel the armed enemies of the United States, to guard the public property, to protect the frontier of the country, and to suppress domestic violence within a State upon the application of the governor when the Legislature thereof cannot be assembled; and in case of the legislative, executive, and judicial bill, for the reason that Congress repealed the Federal election laws and denied to the President the authority to send his officials into a State to keep the peace at the polls, to arrest its citizens on election day at pleasure with or without process, and to usurp the functions of the State officials, so far as the construction and enforcement of their own organic and statutory laws are concerned. The plain issues between Congress and the Executive are, shall the people be taxed to support an Army to keep the peace at the polls, and shall the Federal Government by its civil officers usurp the functions of the judicial and police officials of the States, and violate with impunity the letter and spirit of the sixth amendment to the Constitution, which reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Here is a solemn constitutional guarantee to protect the persons, &c., of the citizens of all the States, the execution of which is confided solely to the States; yet it is trampled under foot by these unconstitutional election laws which strike down the right of the States to enforce and protect this guarantee of person and property and confer plenary authority on the supervisors, marshals, deputies, &c., to arrest the citizen at pleasure and call all the powers of the Federal and State governments to aid in the usurpation.

These issues have been sharply drawn by the action of the majority and the vetoes of the President. Let the great sovereign power of the Republic—the people, who are the intelligent masters of both Congress and the Executive—determine which is right.

It is to be hoped that Congress, in the interest of free constitutional government, personal liberty, and home rule, will maintain with becoming moderation, dignity, and firmness its impregnable position on these questions. Should it do so, history will have been written in vain, the warning voice issuing out of the tomb of the past will have been unheeded by the country, and the melancholy fate of the nations of earth who lost their liberties by military domination will have been without influence on the public mind unless it is sustained in its wise and patriotic course by an overwhelming verdict of the people. Let these issues be clearly understood by the country. Congress has performed its constitutional duty, and appropriated $——— for the support of the Army, and $——— to defray the expenses of the legislative, executive, and judicial departments of the Government. The Executive has answered that the statute must retain "or to keep the peace at the polls," and the Federal election laws must remain in force or he will reject the proffered millions of the people's money, and the Army shall disband, the legislative, executive, and judicial departments of the Government shall die, or all be supported without the consent and authority of Congress.

Congress demands the repeal of these laws because they are unconstitutional, are an invasion of the supreme right of the States to keep the peace at the polls, and are dangerous to the freedom of elections. The President insists that the laws are constitutional, and objects to the repeal on the Army bill because it will interfere with the civil officers of the United States "in keeping the peace at the polls, and preventing frauds, &c., in congressional elections." The civil officers referred to by the President are the supervisors, marshals, and deputies named in the Federal election laws. Congress denies that either the military or civil officers of the United States can be constitutionally used to keep the peace at the polls or to superintend, with a view of preventing frauds, either a congressional election or any other election, and insists that all these duties devolve upon, and must be performed by, the judicial and constabulary officers of the States. The President and the minority rest the authority to use the Army at the polls, and the constitutionality of the Federal election laws, on section 4 of article 1 of the Constitution, "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators," and on the grant of power claimed under the fifteenth amendment:

> SECTION. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

It will therefore be admitted, if these sections will not sustain the constitutionality of these laws, that they are unconstitutional and ought to be repealed. The second section of article 2 of the Constitution describes the electors for members of the House of Representatives as follows:

> The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

It will be seen from this constitutional declaration that the whole subject of the qualification of electors belongs to the States, with the simple prohibition of the fifteenth amendment, that no discrimination shall exist in their laws against any citizen of the United States "on account of race, color, or previous condition of servitude." Outside of this restriction the States may prescribe whatever qualification they please, either in way of education, possession of property, discharge of tax obligations, or denying suffrage by reason of unfitness from moral turpitude.

I have been taught to believe that in the construction of the organic or statutory laws of a State, the constructions given to them by the State judiciary were always accepted as binding precedents by the Federal courts, and *vice versa* as to the construction of the organic and statutory laws of the Federal Government. But this principle of comity between the Federal and State governments, each supreme in its separate jurisdiction, is trampled down by these election laws; for while the qualifications of the electors are set forth in the organic and statutory laws of the State and materially differ in the several States of the Union, these federal marshals, supervisors, &c., are empowered to set aside the judgment of the State officials as to qualification of the electors offering to vote, and to arrest them with or without warrant and call all the civil and military powers of the Federal and State governments to their aid. The third section of the Constitution provides that—

> The Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof, &c.

It was evidently intended that this Legislature should be legal in every respect; legally organized and composed of members elected by legal and qualified voters. If section 4 of article 1 can be construed as a grant of power to Congress to authorize either the civil or military officers of the Federal Government to enter the State to preserve the peace at the polls, take charge of or exercise supervision over the ballot-box, construe the organic and statutory laws of the State, and prevent frauds in the elections of members of Congress, it necessarily follows, as the same section confers the same power over the election of Senators, (with one exception, the place of election,) that Congress may authorize the Federal officials, civil and military, to inquire into the legality of the organization of a State Legislature, examine and pass upon the credentials of persons claiming seats in such a body, and go back to the polls even to see that none but qualified electors voted in their election. Such a construction of this section traced to its logical result would authorize the sending of Federal marshals and supervisors not only into an organized legislative body in the State, but to the polls, to supervise and oversee the election of members of the State Legislature, with a view of preventing frauds in the election of United States Senators. The absurdity of this construction was ably and forcibly demonstrated by the finished and conclusive argument of my colleague, Mr. CARLISLE.

That Congress has the power to prescribe "the time, places, and manner" of holding elections for Representatives is not denied. But the remedy for a violation of its constitutional enactments in these respects we earnestly protest does not consist in sending marshals and supervisors, backed by military power, into the States, to arrest at will, on election day, with or without process, citizens offering to vote, and prevent discriminations against citizens "on account of race, color, or previous condition of servitude," but in the authority of Congress to "judge of the elections, returns, and qualifications of its members," and in its power to reduce under the fourteenth amendment the representation from any State for unconstitutional discriminations by law against any of its citizens in the matter of suffrage, and in its probable authority under the fifteenth amendment to visit penalties by indictment and prosecution in its own courts on election officers who discriminate against citizens "on account of race, color, or previous condition of servitude." The President admits that there has been military interference with the freedom of elections in the past, but denies that any such interference has occurred since the passage of the *posse comitatus* act in 1878 or can occur under the laws now in force. We submit that this is an evasion of the issue. It makes no difference to the people whether the military is at the polls on the motion of its own officers or there under the direction and control of marshals and supervisors. They insist that it shall not be there at all for the purposes contemplated in the statutes which the majority seek to repeal.

Mr. Chairman, when I heard the distinguished gentleman from Ohio, in his peculiarly bold, vigorous, and energetic manner, charge the majority with the crime of starving the Government to death, my patriotism was not only horribly shocked and thoroughly aroused, but I was most profoundly impressed with the novelty and originality of the idea. I knew that in many countries, when the earth had refused to yield a generous response to the labors of man, entire villages, cities, and nations had been swept away by the fearful ravages of hunger and starvation; and history had taught me that the whole earth was strewn with the monumental wrecks of governments that had fallen by military usurpation, by the conquering armies of some more powerful nation, which had been overthrown in internecine strife or in great political upheavals when the people had been maddened by the

corruption and crime of their rulers; but I had never read or heard of a government that had died of pure and simple inanition, and it had never occurred to me that it was possible for this great Republic—the light and glory of the world—to meet with such a melancholy fate until I heard the remarkable speech to which I have alluded.

But, sir, I now understand that notwithstanding it has a vast territory stretching from ocean to ocean, unmatched by any on the globe in all the resources necessary to sustain physical and political life, a population of forty-five millions of brave, loyal, and generous people, willing to contribute by taxation to the maintenance of its power and glory, with the money already gathered into its Treasury and appropriated for all its legitimate and constitutional wants, that still it may die, as a common beggar, of starvation, without a hostile arm being raised for its overthrow, by the simple refusal of its executive head to perform his constitutional duty and apply its resources to its sustenance and support. But history neither furnishes a parallel for such a death nor the prototype of a monster capable of the perpetration of such a crime. The death of a government from any cause disturbs commerce, awakens the sympathy of mankind, and the echoes of its fall reverberate throughout the bounds of civilization. What tongue can describe, what pen delineate, or what brush portray all the horrors of the death of this great Government from starvation?

When I heard this charge of the minority I looked with a sad heart and an inquiring mind upon the melancholy picture of its realization as partially drawn by the masterly hand of the gentleman from Ohio. I wandered in imagination to the White House, the goal of so many scheming and vaulting ambitions, the place of so many plots and conspiracies for the overthrow of the liberties and for an increase of the burden of the people. Around the mighty mansion solitude reigned supreme. The music of the Marine Band was hushed; the murmuring fountains had ceased to play; the green grass had withered upon the presidential lawn; the graveled walks no longer reverberated with the hurried tramp and the rolling wheels of the crowd of parasites and sycophants hastening to pay court to the source of Government patronage and power; the corps of ushers and lackeys who once thronged its entrance with servility and obsequiousness for the rich and the proud, and haughtiness and moroseness for the poor and the humble, had all disappeared. Within the executive palace, adorned with more than oriental magnificence and exceeding in beauty the poetic vision of the castle by Lake Como, all was darkness and desolation; its beautifully frescoed, spacious rooms and corridors no longer echoed with the cat-like tread of the diplomate, the louder tramp of the place-hunter, or the deceitful greetings of the politician and the statesman; its gorgeous carpets of brilliant dyes and softer than the velvet-coverings over which the imprisoned and sighing beauties of the harem glide were full of the dust and *debris* of decay; its costly mirrors, each exceeding in value the broad acres upon which the average agriculturist toils from the rising to the setting of the sun to support a precarious existence and meet the incessant demands of the tax-gatherer, were dismantled and broken.

The dazzling mass of artificial light shed by its brilliant chandeliers to illuminate its richly adorned parlors and halls for the entertainment of the gay crowd of wassailers, made up of youth and beauty, age and shame, all "prankt forth in the pride of ornament," who were accustomed to assemble there, had been eclipsed by the darkness of desolation. The oiled back doors through which the stalwarts had stealthily and noiselessly crept to whisper evil counsels into the ear of the Executive of doubtful title, now, all unguarded, gratingly swung to and fro on their rusty hangings. The festal board, with its costly and imperial service, which was wont to be ladened with delicate and delicious viands that would tempt the palate of the gods and had been the scene of so much wit and mirth, so many diplomatic intrigues and official gallantries, was now even more barren of good cheer than the beggarly feast to which the Athenian Timon invited his false and treacherous guests. By the phosphoric light of decay, seen on every hand, I groped my way to the President's office. Scattered over the floor were the moldering, neglected, and long-forgotten petitions of widows, orphans, and prisoners, praying for executive clemency. The waste-basket was crammed with written memorandums, made by the Executive to delude and deceive the applicants for place and official recognition. Before me was seated the august creature of "*eight to seven*," transfixed to his chair by the debility of hunger, alone in his agony and remorse, and as stiff and rigid in appearance as the living dead "man with the broken ear," whose history was chronicled by E. About. Before him lay an unsigned check for Tilden's salary. But the hand that had steadily drawn the money justly and righteously the property of another was no longer able to perform its accustomed functions. His *couleur de rose* had faded and had been succeeded by the pinched and livid look of famine. Though dying of hunger, he slowly muttered, "the stiffness of my spinal column but illy comports with the emptiness of my stomach." And from his parched lips there followed, like a cloud of winged snakes, curses on the stalwarts who had tempted him to starvation through a breach of his oath to observe the Constitution of his country. Moved with compassion for suffering humanity, and stung with a feeling of patriotic grief, I cried aloud, "Oh, for a cold capon and a flagon of ale to reanimate this famishing and dying executive hero!" But no one heeded my call, and in sorrow and remorse I turned away from the presidential palace to look upon the desolation that reigned in the War Department. Its clerks, employés, haughty officials, and lounging officers on leave had all fled at the approach of starvation. The hot air of famine rushed through its lonely, deserted rooms and passages, ruthlessly scattering here and there the able reports and brilliant records that chronicle the heroic and historic deeds of our mighty men of war. The fearful solitude was broken by a voice in soliloquy, and I lifted up my eyes and beheld the successor of the immaculate and immortal Belknap. His sleekness and rotundity had disappeared. A gnawing stomach had drawn the hard lines of pain and anguish on his handsome countenance as he totteringly strode, *a la* Napoleon, through his office. He said: "Now would I gladly exchange the baton of a war chief for the paler glory of the woolsack. It would have been better, far better, to have 'let this cup pass from our lips.'" The gallant Army is dead. It melted like snow in the scorching glance of famine.

> Now its tents are all silent, its banners alone,
> Its bayonets unlifted, its bugles unblown.

No more will its handsome, highly educated, and blue-blooded officers, with practiced muscles and scientific minds, dance the german with the fashionable belles of society, and in banqueting rooms apply the rules of engineering to the measurement of the curvilinear lines and ricochetting angles of the bounding corks of Mumm's Extra Dry. Now the heathen red man "will rage and imagine a vain thing," that the scalps of the pale-faces shall dangle from the belts of the "Young Man Afraid of his Horses," Red Cloud, Sitting Bull, Spotted Tail, and Crazy Horse. Oh, that some spirit would breathe upon the dry bones of the Army and reanimate them as the angel did those in the valley of Jehoshaphat. I wept in sympathy with this mourning soliloquy and would gladly have aided in the resuscitation of our men of valor, for I am proud of the military prowess and glory of my country; but the genius of Columbia, out of the thick murkiness which enveloped the building, answering said: "Millions for the defense, but not a cent for the overthrow of the altars of freedom." Hard by, in the Department of Justice, I heard the sound of agony and wailing. Impelled by patriotic instincts, and with a profound respect for the supremacy of the law, I rushed frantically forward to contribute my aid. As I entered the portals of the ancient temple I read this inscription: "Justice hath departed these bounds, and whoso trusteth to constitutional guarantees doeth a foolish thing." The worthy successor of Father Taft was in the very extremity of hunger. He held in his withered hand the skeleton of a codfish caught by a New Englander at an expense of five and a half millions of the people's money. His patriotic heart was shriveled with grief, and his eyes were red with the internal flames of famine. Grasping in one hand the odious election laws, and with the other applying the fleshless bones of the skeleton cod to his parched lips, he exclaimed: "My marshals are gone, my corps of supervisors have fallen; the iron cages in which were imprisoned on election day thousands of the sovereign people of the country are now empty; the despotic Genius of Liberty protects her votaries, but rewards my patriotic services with starvation and wretchedness!" In the darkness over his head I heard the rustling wings of the great spirits who had administered at the altars of justice in the purer and better days of the Republic, and in voice they answered his loud complaint.

Would you usurp the patriot's dear-bought praise?

> To just contempt, you vain pretender fall,
> The people's scourge, and the scorn of all.
> Straight the black cloud sent forth a horrid sound,
> Loud laughs broke forth, and bitter scoffs flew round.
> Whispers were heard, with taunts reviling loud,
> And scornful hisses ran through all the crowd.

With a feeling of painful solicitude, and tender regard for its venerable chief, I wended my way to the Navy Department. Its flag was at half-mast and no longer kissed the breezes with its bright folds; its rosy tars, gallant middies, and numberless officers on full pay and indefinite leave had snuffed afar the scorching winds of famine, and aboard our noble Navy, second to none on the globe save that of the Sandwich Islands, had floated far away over the deep blue sea. The huge army of contractors, who had grown fat on fraudulent contracts and swindled the tax-payers of the Republic out of untold millions of money, had fled in dismay from its empty exchequer. The grand old sea-king of the Wabash was alone in his glory. Talk about the gallantry of Nelson at Trafalgar; the heroism of Perry on Lake Erie, or Lawrence dying with the flag of his country nailed to the mast! Before me was a scene that defied comparison, for which the heroism of the race furnished no parallel; the genial, warm-hearted Thompson was dying at his post. Though greatly emaciated by hunger, the ruling characteristic of his soul—Christian benevolence—was still depicted upon his face. With a heart fired by patriotic fervor, he had risen superior to the aching void of an empty stomach, and, with the melody of a dying swan, was pouring forth the words of that grand aphorism of the Pinafore:

> Stick to your desk and never go to sea,
> And you may be the ruler of the Queen's navee.

Oh, for a cat-o'-nine-tail, to scourge the guilty conspirators who reduced to starvation the gallant rover of the ocean! I dropped a sad tear to the memory of the dying son of Neptune, and, sighing for a drink of old Bourbon with which to retune his musical pipes, took my departure for the State Department. This unfinished colossal pile, of faulty taste and skill, neither Gothic, Ionic, Doric, Tuscan, nor Corinthian, but an inharmonious blending of every style, ancient and modern, known and

unknown to art and architectural science, in the construction of which thousands have been criminally wasted and recklessly squandered, loftily towered amid "the dun, electric clouds" which enveloped its huge area and gigantic proportions. Entering its unguarded portals, I felt as lonely as a tourist immured in the heart of a pyramid. Not a sound broke its horrid silence. The very papers and records which told the shameful story of bribery, corruption, dark intrigues, diplomatic scandals, and fruitless negotiations, looked seared and withered. Threading its "long, sounding corridors," I found myself in the office of its Secretary.

It had long been suspected that this Department of the Republic was dying of the dry-rot, as evidenced by the insults to our flag, by the imprisonment of our citizens in Mexican dungeons, the raids, bloodshed, and devastation on the Texas frontier, and the treatment of our naturalized Germans in the land of Bismarck; but I was wholly unprepared for the scene before me: The courteous and cultured ruler of our diplomatic corps, the mighty *aliunde* counselor of the great electoral swindle, without the physical ability to withstand the penetrating pangs of inanition, had shriveled up and died, and looked for all the world like one of the mummied kings that ruled in Egypt four thousand years ago. His puny arm pointed eastward, and his glaring eyes were set toward the west, and seemed to have been looking far away over the sea. He had evidently "shaken off this mortal coil" while contemplating with conscious pride and satisfaction profound the juicy steals of Shanghai and the still more corrupt canvassing-board infamies of Paris. Terror-stricken by the ghostly scene I rushed onward to the Treasury Department.

It would require the descriptive pen of Taylor, under the inspiration of hasheesh, or the sorrowing poetic genius of Poe, when recovering from the effects of a debauch, to describe this vast building "with horrors haunted." The stealthy steps of the plotting and avaricious members of the syndicate were no longer heard. The horde of thieves, who through the corruption of its officials had preyed upon the vitals of the nation for eighteen years, had departed. Its unnumbered, handsome, dashing widows and beautiful, hoidenish maidens were all gone. But its brave assistants, chiefs of divisions, male clerks, and employés, lingering in the hope of a continuance of fat salaries, had been transformed in their rooms and at their desks by starvation into a great multitude of grinning and hideous skeletons. Each one held in his fleshless fingers a patriotic resolution, denouncing in indignant terms a visiting company of Virginia boys. And as the mourning winds, ladened with the sighs of murdered virginity, roguery, fraud, and rascality, rushed through the grand pile of masonry, the skeletons shook and their dry bones rattled like the peltings of the hail-storm. Scattered in every direction were shining heaps of gold, "dollars of the daddies," ten-forties, five-twenties, seven-thirties, new fives, and four and a halfs, while the simpler greenbacks were strewn thicker than the leaves of Vallombrosa. Picking my way through all this glittering wealth and mass of starved humanity, I entered the inner sanctuary of the great autocrat of American finance. He was a perfect picture of the horrors of starvation and was gnawing on a golden ingot, and as he bit and munched he said in ghostly and incoherent whispers: "I have gathered together the wealth of the nation, have bankrupted merchants, have broken manufacturers, have reduced agriculturists to poverty, have despoiled labor of its just reward, have filled the land with tramps, have sent starvation and misery to the widow and the orphan, and have turned the burdened tax-payers of the country over to the remorseless and insatiable greed of the bondholders; but now I would give the gold of a thousand mines and the wealth of the world for a fat muttonchop and a stoup of liquor.' Oh, for my valiant corps of retainers, Eliza Pinkston, Frank Webber, 'John Anderson, my jo, John,' and 'Captain Jenks and the Horse Marines,' to make one last, final charge on the devouring monster of famine!" In pity and disgust I turned away from Sherman's swiftly approaching dissolution to see whether national life still throbbed in the Post-Office Department. As I approached I discovered that my worst fears were more than realized. The mail-wagons gathered in the court-yard were all broken and shattered, the draught-horses were all dead, and the drivers had all flown. As I penetrated the interior of the handsome building, rank with the odors of fraudulent mail contracts and straw-bids, I heard a voice in the depths of its solitude saying: "The postal railway commission with its unsettled accounts, the thirty-thousand-dollar steal in the remodeling of this building, the air-duct mended for fifty dollars and charged at three hundred, and the windows cut down for $100 and billed to the Government at six times that amount, will outlive the horrors of starvation and perpetuate forever the economy and frugality of this Department."

Heeding none of these things, I pushed forward through the deserted halls to the abode of the Postmaster-General. My heart was moved with contrition, and my eyes were wet with grief as I looked upon the scene. Before me was "the rose and expectancy of the State" of Tennessee, the noble and soldierly Key. But his obesity was all gone, and there was a look of supreme agony and hunger upon his face. On his right hand was the cadaverous Tyner, holding aloft a placard with this inscription: "Indian agencies, $5,000 apiece, and money applied to the purchase of greenback party of Indiana," while on the left, knelt the once robust but now emaciated Brady, and on his breast was written "Cipher dispatches manufactured to order or purloined on short notice from the committee-rooms of Congress." The entire group were locked in the fast-tightening coil of starvation. They were a living realization of the statues of the fabulous priest of Apollo and his sons in the fatal embrace of the serpents of Pallas. The gaze of the patriotic Key was fixed on a receding mess of pottage, and as it disappeared from his longing eyes he cried in a loud voice of entreaty, "Was I not a confederate, am I not a democrat?" Out of the gathering gloom an unknown voice in derision answered, "The voice is the voice of Jacob, but the hand is the hand of Esau." Impelled by a feeling of devotion for a knight of the "conquered banner" and with the hope of finding beer and Bologna sausages, Limburger and Schweitzerkase to relieve him from the wasting constriction of starvation, I made a forced march for the Interior Department.

Within that mammoth structure of architectural grandeur and solidity not a living human foot-fall or voice was to be heard, but all its long halls and rooms were filled with the most infernal din and clatter that ever cursed the ears of mortal man. The machines in the model-rooms were all in motion. The disembodied spirits of inventors who had been cheated and defrauded out of their rights those who had spent years of fruitless toil in perfecting useless inventions, with thousands of others who had been crazed by the idea of perpetual motion, had returned to earth, set their machines going, and with the loquacity of the vendors of patent rights were in dreadful whispers explaining in detail to each other the wonders of their marvelous inventions. Ghostly visitors from the happy hunting-grounds had returned to dance in spirit the war-dance and brandish the tomahawk and scalping-knife in the desolate building whose records tell the woful and shameful story of so many frauds, cruel wrongs, and outrages inflicted upon the heathen red man by the Christian pale-face. With nerves braced by a sense of patriotic duty, and hair standing out like the quills of the fretful porcupine, in terror of this pandemonium of horrid and unearthly sounds, I continued my course amid the gathering shadows, trusting that happily I might find alive the ardent German reformer. I pushed open the door and entered his room. Oh, shameful desertion! Oh, piteous spectacle! The noble Schurz, the Lord Halifax of this age, the great trimmer in American politics, who had never been able to determine whether he loved Cæsarism less or Rome more, was fighting the fearful battle with grim famine unaided and alone. His scholarly mind was in ruins, and in the fierce conflict the griping monster had dragged him to the floor. He was raving in the delirium of inanition. With one breath he cried for Bretzels and Schweitzerkase and sung snatches from the sweet songs of the Fatherland, and in another, as his mind recalled the purity of our public service, he said, "Behold the glory of *civil-service reform!* Not a thief, cut-purse, mountebank, canvassing-board juggler, corrupt political trickster, or returning-board scoundrel, who has plundered and wronged the people and outraged public decency, but has received the reward of his patriotic services by a place on the judicial bench, an appointment in the consular and diplomatic service, or in some other department of the Government." Proud of the gratitude of the Republic in this respect I beat a hasty retreat, crying as I went the watchword of reformation, "*Civil-service reform!*"

As I broke through the door on Seventh street I encountered a vast army of attorney-generals, auditors, commissioners, agents, and Department clerks. Their glossy tiles were battered, their mammoth shirt-collars and spotless cravats were hanging and dangling loosely about their shriveled necks, their costly wardrobes were all in tatters, their capacious stomachs, in which had sweetly reposed myriads of oysters and soft-shelled crabs, submerged in ale, beer, old rye, and champagne, were now hollow and empty, and their sunken eyes were fairly blazing with patriotic wrath and furious cannibalism. When they espied me their griping stomachs had fresh and ravenous contractions, and they cried with one voice, "Behold a democratic conspirator; let us slay and eat." Panting for life, and with the instinct of liberty, which always finds its last sanctuary in the legislative halls of a nation, I fled for refuge to the Capitol of my country and crossed its sheltering portals in safety. This mighty structure, which bears a close resemblance to Pope's temple of fame, exhibited none of the evidences of decay and desolation seen elsewhere. Here peace and quiet reigned throughout all the splendid chambers, halls, and corridors. Some unknown hand had crowned its statues and wreathed its paintings with evergreens and flowers, but I was surprised to find "the fog-bank" empty and "the cave of the winds" silent, until I recalled the fact that its legislators, pinched by want, without the necessary funds to pay room-rent, board-bills, and patronize the shrines of Bacchus, had tramped their lonely way homeward to meet the great sovereign people.

Walking out upon the esplanade to take a farewell view of the great city which bears the immortal name of Washington, I saw a great company of stalwarts approaching. And the big stalwarts from Ohio, New York, and Maine cried out "revolution, treason, rebel conspiracy, and starvation of the Government." And all the little stalwarts clapped their hands with joy; and then I heard a rumbling sound and the mighty structure shook with internal throes, and I raised my eyes and beheld the genius of Columbia materialized and hovering over the Capitol. Her colossal figure was gracefully draped in the Stars and Stripes, which, floating back, kissed the blue clouds that canopied the scene. In her right hand she waved the olive branch of peace, and in her left she held the open Constitution of our country, and in a voice like the thunders of Olympus she said, "You see with

jaundiced eyes; the Government is not dead; this contest has but laid more deeply and broadly the foundations of civil liberty. The military must be subject to the civil power and the autonomy of the States shall be preserved." Gnashing their teeth in rage and disappointment the stalwarts fled from before the face of the goddess, and I bowed my head with thanks that the Republic had survived the horrors of starvation, still lived in all its power and glory and that the devil-fish of corruption and centralization was dead and damned forever.

Legislative, etc., Appropriation Bill.

SPEECH OF HON. A. G. THURMAN,

OF OHIO,

IN THE SENATE OF THE UNITED STATES,

Thursday, May 15, 1879.

The Senate having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. THURMAN said:

Mr. PRESIDENT: Before I proceed to make the remarks which I wish to submit on the pending bill I am moved to make an observation in regard to the discussion which was going on when I entered the Senate, some twenty minutes ago, between the Senator from New York [Mr. CONKLING] and the Senator from Kentucky, [Mr. BECK,] and to express my surprise that the Senator from Kentucky, generally so acute, should have so totally misunderstood the Senator from New York. The Senator from New York had stated a proposition which amounted to this, that the people of the place where the taxes are collected are the people who pay the taxes, and the Senator from Kentucky has gone to work in real, dead seriousness to refute that proposition. If he had remembered an incident in the life of Cicero he would have understood the Senator from New York. When Cicero made his celebrated speech against Piso, and Piso, who was a member of the Roman senate, rose and reproached him with his inconsistency, calling attention to the fact that on a previous occasion Cicero had covered him all over with eulogy, Cicero arose and said that Piso was certainly the only senator who did not know that the eulogy to which he had referred was simply a rhetorical exercise to see what he could make out of so bad a subject. And so, Mr. President, the speech of the Senator from New York and the speech of the Senator from Minnesota [Mr. WINDOM] to prove that the people at whose places of residence the taxes are collected are the people who pay the taxes were simply rhetorical exercises of our American Ciceros to show what can be said in favor of an utterly absurd proposition.

If the doctrine of the Senator from New York be true, he has no right to count a single man outside of the city of New York as a payer of customs duties collected at that port, not one. He can no more include the people of the State of New York outside of the city of New York than he can include the people in every other State of the Union who consume goods that are imported into New York. The same rule that includes one must include all. Nay, sir, he cannot cross the East River and say that the people of Brooklyn, separated by only three-quarters of a mile or so from the custom-house in New York, pay any part of the taxes that are levied at that custom-house; for his doctrine is that where the taxes are collected, there they are paid by the people. Mr. President, that is simply a rhetorical exercise to show what can be made out of an utterly absurd proposition. That is all there is of it. It may deceive somebody in the swamps of New York, if there are any swamps there. It may deceive somebody in the swamps of Minnesota, and there are swamps there to my certain knowledge. It may deceive some ignorant people everywhere all over this country; but to an honest intellect it is an unmitigated absurdity and an imposition. That is all there is of that, Mr. President.

I have a task to perform to-day, sir, which I shall perform with difficulty; first, because there is so much ground to be covered, and, secondly, because I am unwell. I must therefore ask the indulgence of my brethren not to increase that task by interrupting me. If I shall say anything that leads to inquiry, I shall be happy, after I am through, to answer any questions they may put to me; for I am sure they will put none that will not be pertinent.

Mr. President, we have before us an appropriation bill for the support of the legislative, executive, and judicial departments of the Government. That it is amply sufficient for that purpose for the fiscal year to which it relates, no man can deny. No man assails it on the ground that it is too extravagant or that it is too niggardly. To the bill itself, so far as it makes appropriations, there is no serious objection that I have heard. But there are in the bill certain provisions relating to two great subjects: the first relating to trial by jury; the second relating to elections; and to these provisions objection is made, an objection so strenuous that rather than agree to these provisions, the minority on this floor say that the appropriations for the Government shall stop, or at least that a bill making those appropriations shall be defeated if they can defeat it either here or elsewhere.

There is one thing, I will not say very remarkable, perhaps it is human nature, and therefore to be expected; but still there is one thing that must have struck those who have sat here for a month and more and listened to the debates, and that is, that scarcely one word has been said by the opponents of these provisions upon the merits of the provisions themselves. They have been assailed because it is said they have no place in an appropriation bill. I think I will show that there is no reason in that objection. They have been assailed for a reason far less tenable, because it is said they are dictated by the South. They have been assailed because gentlemen in their imaginations have seen fit to suppose a huge conspiracy of a majority of the people of the United States to produce anarchy in the United States, as if that majority, as if the democratic people of the United States had not quite as much interest in the preservation of order, in the preservation of peace, in the prosperity of the country, in the perpetuity of the Government, as any man that belongs to the republican party or to any other party in the whole Republic. All these things have been said, and this session has been made the occasion of what? Of calm, deliberate senatorial debate on these questions by the minority? No, sir; but of the most inflammatory and unfounded and unjustifiable attempts to array one portion of the people of the United States against the other, and to make sectionalism in this country as permanent and enduring as the continent itself. That, sir, has been the character of the debate on this bill and on others by those who have opposed them, ever since they were taken up in this body. Ah, Mr. President, if these measures ought not to pass, if these provisions in the bill which are simply repeals of existing statutes and the substitution, so far as juries are concerned, of a perfectly honest and fair proposition, if these measures cannot stand on their own merits, why have not Senators pointed out their defects? Why have not Senators condemned them upon their defects? Will it do to skirmish around the edge and talk about their being affixed to an appropriation bill, when one entire third of your general statutes were passed upon appropriation bills? Will that do when a part of these very election laws that we seek to repeal was ingratted on an appropriation bill? Will that satisfy the American people? Will they say to these gentlemen "these measures were all right; we ought to have fair juries; we ought to repeal laws that are not in the interest of fair elections, but are mere instrumentalities of fraud and corruption; but we will justify you in defeating an appropriation bill for the support of the Government, and we will justify the Chief Executive of the country in vetoing the bill, because these measures were placed upon a bill of supplies?" What a broad foundation that is upon which to go to the country! No, Mr. President, that will not do. These gentlemen must argue the merits of these laws which are proposed to be repealed. They must satisfy the public that these laws ought to stand, or the people of this country, if they are as intelligent as they ought to be, and as we all profess to believe that they are, will never sanction the course of opposition that has been taken here; and much less will they sanction the seizing of this opportunity to arouse and perpetuate sectional feeling in the country.

This is southern domination, we are told. Why, sir, there is not a line in the provisions of this bill that is objected to which is not as much in the interest of every northern man as it is of every southern man. There is not a line in them that was dictated by a southern man or written by a southern pen, not one. Why, sir, look at it! As I said before, the provisions relate to juries and relate to elections. Is it not as much the interest of the northern man to have fair and impartial juries as it is to the interest of the man in the South? Is there any sectionalism, is there any southern domination, is there any southern dictation in asking the Congress of the United States to provide that juries in the Federal courts shall be fair and impartial instead of being packed and villainous? Is that sectional? I fancy not. Is it sectional to ask that laws which, instead of purifying the elections, are mere instrumentalities of force and fraud and corruption shall be expunged from your statute-book? Is that a matter that concerns the South more than it does the North? Presently I will show you where these election laws originated, and I will show you upon whom they operate; and those who hear me and have not looked into it may be astonished to find that of all the portions of this Republic, from Maine to California, the people of the South are the least interested in this subject of the election laws. They were not made for the South. I know that it was pretended that they were made for the South. I know that it was pretended that they were to protect the freedman against the kuklux; but I know that it was not to protect them that they were made or have been executed, but that it was to oppress voters at the North, and especially to disfranchise, nay, worse than disfranchise, to imprison and persecute the naturalized citizens of the North that these laws were passed and have been executed.

Mr. President, the Almighty Father made me with nerves and a heart, for which I am truly grateful, but they sometimes excite a feeling of indignation that makes me forget that I am weak, and that I ought not to give way to my feelings. I was speaking about these election laws, and a picture of the operations under them in the city of New York, a picture of a cage full of men sweltering and suffering under the arbitrary and dictatorial mandates of a contemptible and corrupt commissioner of elections arose before my imagination, and

I could not avoid the thought that a transaction had taken place in this country that could not have taken place in any other civilized country on the globe without blood being shed. Sir, of all civilized people on the face of this earth the American people are the most law-abiding. That thing never could have taken place in the city of London, or the city of Liverpool, or the city of Paris, or in Vienna, or in Berlin, without raising such a commotion as would have made the government tremble. But I will try to get down to a lawyer-like temper of mind, for I propose to-day to speak, very dryly, I dare say; and I rather hope that I shall speak dryly, because then I shall make a better argument—I propose to speak upon the Constitution, if that instrument may be mentioned here without shocking the feelings of any one and without being a violation of parliamentary rules, and I propose to speak of the law.

Now, Mr. President, first let us look at the jury provisions in this bill. It is certainly unnecessary for me to detain the Senate long by speaking of the importance of impartial juries. It is not necessary for me to tell the scholars of the Senate—and all Senators are supposed to be scholars—that the English-speaking people have ever cherished with an unyielding tenacity their attachment to trial by jury. But it may be that there is some one here who does not fully comprehend why it is that the English-speaking people have always been so much attached to trial by jury, so much so that we find it secured by Magna Charta itself; and Sir Edward Coke said that its insertion in Magna Charta was but an affirmation of the undoubted and imprescriptible right of Englishmen. But what is the reason why they have had so much attachment for it? Was it because twelve men were the best tribunal to decide a question of *meum* and *tuum* between A and B? Was that the reason why our ancestors were so much attached to trial by jury? Could not every lawyer tell them that in a vast multitude, in perhaps the larger proportion, of cases of mere *meum* and *tuum* between private individuals the civil law followed a better and safer mode of ascertaining the truth than the trial by jury? That while in certain cases of private right, such as cases of defamation, cases of assault and battery, and wounding, and the like, trial by jury was better than trial by a judge; yet that in cases of mere dollars and cents, in cases of account, in cases of title to real estate and the like, the civil law afforded a much more accurate mode of trying the case than the twelve men, who must be unanimous in order to render a verdict? Why, then, was it that the trial by jury was so dear to our ancestors and has been so dear to us, so dear to them that they asserted it from Magna Charta to the Act of Settlement, and that it found its place in the declaration of our independence and in the constitution of every one of the thirteen original States, in the constitution of every State since, in the Federal Constitution, and in our laws? Why is it that there is this love for the trial by jury? It is because English history teaches that the trial by jury has been a great shield of the people against oppression by the Government; that it has been a great and a necessary instrument for the defense of liberty. That is the reason why in England and in this country it is so dear to the people, and will ever be dear to them so long as they prize their liberties and have the courage to defend them.

But, sir, to be such a shield the jury must be honest and impartial. If it is not honest, if it is not impartial, if it be suborned or packed by the Government itself, then an instrument which was intended for the protection of the citizen becomes his worst enemy. Is there any history to warrant this assertion? Have there been no judicial murders? Have juries never been packed to convict, organized to convict? I need not say here that in the country from which so many of us derive our ancestry, and from which we derive our laws, such instances have too often occurred. On this subject let me call your attention to the language of the philosophic author of the constitutional history of England. I read from the first volume of Hallam, page 230:

> Civil liberty, in this kingdom, has two direct guarantees; the open administration of justice according to known laws truly interpreted, and fair construction of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain the redress of, public grievances.

Those are the two great guarantees of English liberty, says this philosophical author, and which does he place first? Which does he say is the more important? Hear him:

> Of these the first is by far the most indispensable; nor can the subjects of any State be reckoned to enjoy a real freedom where this condition is not found both in its judicial institutions and in their constant exercise.

And now, sir, speaking of juries, which are a part of the known administration of justice, he tells us on page 231:

> I have found it impossible not to anticipate in more places than one some of those glaring transgressions of natural as well as positive law that rendered our courts of justice in cases of treason little better than the caverns of murderers. Whoever was arraigned at their bar was almost certain to meet a virulent prosecutor, a judge hardly distinguishable from the prosecutor except by his ermine, and a passive, pusillanimous jury.

And then, speaking further, he says on page 233:

> There is no room for wonder at any verdict that could be returned by a jury when we consider what means the government possessed of securing it. The sheriff returned a panel, either according to express directions, of which we have proofs, or to what he judged himself of the Crown's intention and interest.

I must stop reading for a moment to say that that is a perfect description of the law and the practice in too many places in the United States at this day, for it is the marshal now that makes the jury according to his opinion of what is for the interests of the republican party and what will best tend to its success:

> If a verdict had gone against the prosecution in a matter of moment, the jurors must have laid their account with appearing before the star chamber; lucky if they should escape, on humble retraction, with sharp words, instead of enormous fines and indefinite imprisonment. The control of this arbitrary tribunal bound down and rendered impotent all the minor jurisdictions. That primeval institution, those inquests by twelve true men, the unadulterated voice of the people, responsible alone to God and their conscience, which should have been heard in the sanctuaries of justice, as fountains springing fresh from the lap of earth, became, like waters constrained in their course by art, stagnant and impure. Until this weight that hung upon the Constitution should be taken off, there was literally no prospect of enjoying with security those civil privileges which it held forth.

Ah, Mr. President, are we coming to that? I will show presently that though no Jeffreys may ever hold the bloody assizes in this country in all human probability, yet in a minor degree, if not to the full extent of those enormities, to the full extent of those judicial murders, to the full extent which made Hallam declare that the courts of so-called justice became mere caverns of murderers, to that same extent, or in a less degree, the people of this country are exposed, if we shut our eyes to the glaring defects of our jury laws and permit them to remain on the statute-book the mere instrumentalities of partisan interest and party or personal hatred or predilection.

Now, Mr. President, what are our jury laws? I cannot take up time to read them. I should be exhausted if I did so. I believe I can state them briefly, but sufficiently full for our present purpose. The principal jury laws are contained in sections 800, 820, and 821 of the Revised Statutes. It is only necessary to say of section 800 that it provides that juries in the Federal courts shall be selected, as near as practicable, according to the mode of selecting juries in the highest courts of the States. That is an old statute. It was a well-meant statute, and for many years it operated well; but let us see for a moment how it is carried into effect.

The Federal court is to select its juries, as nearly as practicable, according to the mode of selecting juries in the State courts. I will take my own State as an example to show how near the Federal court thought it could go to the State mode of selecting juries.

The State of Ohio is divided into counties, and each county is divided into townships, and each township has a little board of administration of three persons called township trustees. Every spring the trustees of each township send to the clerk of the court at the county-seat the names of so many men, as prescribed by a certain rule fixed by statute, from that township to serve as jurors for the coming year. The number is so fixed that there are always more names in the box than it is necessary to draw. Then the names of the jurors are drawn out of that box, which necessarily contains the names of persons of all political shades of opinion, for there is probably no county in the State, or but very few, in which all the townships are of the same political complexion. In that box are found the names of the most reputable citizens of the township. There are thirteen hundred and odd townships in the State of Ohio from which these men are selected.

How could the Federal court adopt the system of selecting juries in that way from the townships? It could not do it. It could not send out a mandate and compel the township trustees to return to the clerk of the Federal court the names of so many men, because the Federal court has no power over the township trustees. It could not go into the State boxes at the county seat and draw men out of them. That would be a violation of the State law, and the officers who should permit it would be liable to punishment.

What, then, could the Federal court in Ohio do? All it thought it could do and, in general, all that the Federal judges throughout the United States thought they could do, was to provide for a jury-box, to provide for putting names into that box and obtaining juries by drawing names out of it; and that they thought was as far as it was possible for them to make the drawing of juries in the Federal courts conform to the jury system in the State courts. But who was to put the names in the box? It was a matter of very little moment who drew them out, provided they were openly drawn out; but it was a matter of the utmost moment who should put them in, because you can draw no names out but such as are put in; and if all the names put in are red names or black names or white names there will be none but red names or black names or white names come out. But in the days of integrity and honesty, and when nobody thought of packing juries for political purposes, it was supposed to be safe to repose this power in the marshal and the clerk of the court, and it was so provided by an order of the court. Some judges directed that the marshal and the clerk alternately should put a name into the jury-box until the number to be put in was completed, and that a sufficient number to constitute the juries should be drawn out, when a term approached, by the same officers. Other courts provided that the names should be put in by the marshal alone and should be drawn out by the clerk. By one or the other of these modes in almost every State in the Union juries for the Federal courts are drawn, so that where the marshal has the whole right to put the names in the box or where the marshal and the clerk together have that right, he or they have it in their power to say who shall constitute the juries. I have a letter in my possession from one of the most eminent lawyers in a northern State saying that in his district no man's name ever goes into a jury-box in the Federal court unless that man is a republican.

Mr. CONKLING. When did the Senator say that practice began?

Mr. THURMAN. Oh, long ago, if the Senator refers to the orders of court prescribing the mode.

Mr. CONKLING. I thought the Senator gave the date.

Mr. THURMAN. Oh, no; I did not give the date. There are some things that nobody can recollect.

Mr. CONKLING. That was in 1802. I can recollect that.

Mr. THURMAN. It was a great while ago, before I was born, and I did not undertake to give the date. [Laughter.] I found it in force when I came into the practice of the law.

Now, Mr. President, this is not a thing that affects the southern people alone. I could give instances, but I do not want to do it because I do not want to descend to particulars—but I could give instances that perhaps would shock the moral sense of every man within the sound of my voice.

Sir, you may repeal section 820 which prescribes the test oath as a cause of principal challenge, and may repeal section 821 which authorizes the judge in his discretion, against the will of the parties to the suit, at the instance of a third person, a person representing the Government, and the Government having no more interest in the case than it has in who shall be Queen of Great Britain, and not half as much—you may repeal both of these statutes and you will not have reached the root of the evil at all. There still remains the power of the marshal and the clerk to fill the jury-box with partisans and mere partisans alone; partisans of one political party, and but one. That is what the law is, and that is what has been done; and shame it is that it has been done.

Now, what does the provision in this bill propose? First, that sections 820 and 821 shall be repealed outright. Ought they not to be repealed? We did repeal section 820, but it passed into the Revised Statutes without a man here knowing that it was brought back into the statute-book. It was one of those mysterious transactions that occurred in making up that book, such as the striking out of the word "white" from the naturalization laws after Congress had expressly refused to strike it out, like the demonetization of silver which Congress had not demonetized. It was one of the marvelous things of that revision of 1874 which I saw lie on that desk tied up as it came from the printing office and passed by this Senate without the cords that bound the wrapper ever being untied or cut, read by its title alone, because there was no time to read more and because no Senator supposed it was necessary to read more as it professed to make no change in existing law. And so this section 820 stole back into the statute law of this land. What is it? It reads:

SEC. 820. The following shall be causes of disqualification and challenge of grand and petit jurors in the courts of the United States, in addition to the causes existing by virtue of section 812, namely:

Without duress and coercion to have taken up arms or to have joined any insurrection or rebellion against the United States; to have adhered to any insurrection or rebellion, giving it aid and comfort; to have given, directly or indirectly, any assistance in money, arms, horses, clothes, or anything whatever, to or for the use or benefit of any person whom the giver of such assistance knew to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States, or whom he had good ground to believe to have joined, or to be about to join, any insurrection or rebellion, or to have resisted, or to be about to resist, with force of arms, the execution of the laws of the United States; or to have counseled or advised any person to join any insurrection or rebellion, or to resist with force of arms the laws of the United States.

Now, sir, mark it. The suit may be between a boy ten years of age and another boy of the same age, both born long after the rebellion; it may relate to their estate with which the rebellion had nothing whatever to do; they and their guardians who prosecute or defend for them may be perfectly satisfied with the jury; the lawyers on one side may be perfectly satisfied; but some lawyer on the other side may get up and say to a juror, "You, sir, gave a cup of cold water to a weary confederate soldier on a hot summer day, and thus you gave aid to the rebellion, and you cannot sit to try this question as to the property of these boys who were not then born." That is your statute; and that any man can stand up for one moment at this day, fourteen years after the close of the rebellion, to defend such a provision as that makes me wonder at the extent of human audacity.

But what is section 821? Section 821 is even worse than 820 in some respects. Section 820 only gives a right to one of the parties to challenge a juror. It makes aiding or comforting the rebellion a principal cause of challenge, and that principal cause of challenge can only be insisted on by one of the parties to the suit; but section 821 introduces a new figure on the scene. Suppose again these two boys with their guardians trying a suit, the title to a piece of land in the State of Ohio, and a jury is called and the boys are satisfied that the jurors are good men and true, and their friends and their lawyers are satisfied that they are good men and true, and they all, lawyers, friends, and parties, want them to try the case, then, just as they are to be sworn, in steps the district attorney of the United States, or any other person acting on behalf of the United States, and says: "May it please your honor, there are men on that jury who gave aid and comfort to the rebellion; they gave a pair of shoes to a poor confederate famishing soldier when his feet were bleeding in the frost and the snow; they were so vile as to believe that the parable of the good Samaritan was told for our edification and example, and they assuaged the dying agony of a poor confederate with a cup of cold water; they are men who aided the rebellion, and I demand that your honor shall direct that every man in that jury shall take the iron-clad oath or be compelled to leave the jury-box." And if the judge is a fool or a knave, or if he is under the influence of passion or prejudice or fear of consequences, he may make the order and may enforce it. Let no man say that this is an impossible supposition. Such an order has been made and enforced since we assembled in this Chamber; not in Ohio, it is true, but in another State.

Mr. President, ought that to be the law? Ought that to be the law in a country that has the least pretense to call itself civilized, I will not say free? I say it would disgrace the kingdom of Dahomey, much more the United States of America. I do not speak now of whether there was a necessity for that law at the time it was enacted—although it may well be questioned whether it would not have been far better to have suffered the evils that might result from an occasional case of a rebel sitting on a jury than to set the example of passing such a law—but if it were justifiable then, the moment that peace was restored, the moment that we once more looked upon a united, harmonious, and a fraternal people, that law ought to have been swept from the statute-book. It was due to the national character, it was due to justice, it was due to civilization that that law should cease to exist. The only wonder is that it did not cease to exist long ago. We propose now that it shall cease to exist. Pray, is it not time? Pray, is this demand for an honest, impartial jury; pray, is this demand that we go back to the old and well-trodden paths of justice and legal decision; a matter that should fire the northern mind and set all the demagogues in the whole land north of Mason and Dixon's line to declaiming against this side of the Chamber?

So much for the law as it exists. What is the remedy? It is not easy to provide a remedy; but one thing is certain, experience has proved that when you frame a jury system under which there may be many political questions or political trials, or danger of political bias or prejudice, it is essential that you shall provide in some way that the juries shall not consist of men of one political party *alone*. That experience proves. Is there anything strange in our taking notice of the existence of political parties? Why, sir, do we not take notice of it in one way or another, directly or indirectly, in many of the States of the Union, and in the laws of the United States themselves? Do we not provide directly or indirectly in divers States of the United States that judges of election shall be of different political parties? Do we not in our own election laws provide that the supervisors of election shall be of different political parties? We are, as practical men, compelled to recognize the fact that there are in this country great political parties, as there have been in every free country that ever existed. To ignore that is to ignore as plain a fact as exists on the face of the earth, and therefore the proposition in the pending bill that the names of the jurors shall be placed in a box by the clerk of the court and by a jury commissioner, to be appointed by the judge, who shall be of the principal political party opposed to that to which the clerk belongs, and that they shall put in names alternately until the proper number is placed in the box, is not obnoxious to criticism because it recognizes the fact of the existence of political parties.

Will some one say to me what difference does it make about the political character of the jurors when they try a suit on a promissory note between me and the Senator from Vermont if he should happen to have the misfortune to hold mine? If he should hold it and sue me on it and I thought I had a defense, I would not want the jury packed all with stalwart republicans; I would wish something like a fair show; and I am very sure he would not want the jury to be entirely composed of real, dyed-in-the-wool democrats.

Mr. EDMUNDS rose.

Mr. THURMAN. I beg the Senator not to interrupt me. I am really very tired.

But it is not a suit on a promissory note between the Senator from Vermont and me, should such a thing ever happen, which is calculated to cause alarm. Why, sir, does not everybody know that in the Federal courts especially there is a class of cases which are political? There are very few in the State courts. The criminal jurisprudence of the State courts shows very few cases that are political; but a very large proportion of suits in the Federal courts are political. Nay, sir, a great many of them are more. It would be more proper to characterize them as partisan, and that they are prosecuted for partisan purposes.

Do you want to indict a man upon one of these political statutes, take him before some partisan judge, and then to aggravate the matter try him by a partisan jury of his political opponents, organized to convict? Do you call that justice? Sir, we have heard of military commissions organized to convict. They are not the only things that have been organized to convict. Courts have been organized to convict; juries have been organized to convict, and I affirm this day that the most disgraceful pages in all England's history are the pages which record the verdicts of juries organized to convict and of judges selected to sentence to death.

We propose to change that, and forthwith here arises nearly one-half of the Senate and cry out, "see how the confederate brigadiers are marching to the war; they have the audacity to demand impartial juries. Good God! for what was the war fought, for what did we put down the rebellion, if these confederate brigadiers are allowed to have impartial trials in the courts!"

But enough upon this theme. It is time for me to pass to another, and I now take up the subject of elections.

The bill before us proposes to repeal certain election laws enacted

by Congress. On one side, the side opposed to the repeal, it is said that this is an assault upon the purity of elections. It is also said that this is an attempt by these confederate brigadiers to shield them in their enormities, by which they suppress the vote of the truly loyal American citizens of African descent. I think that I shall be able to show that these laws were never originated for the protection of the American citizen of African descent; that they were not enacted for his protection; that they were made for quite a different latitude and for quite a different class of human beings. I think that I shall also be able to show, if I do not deceive myself, that instead of being in the interest of pure and honest elections, they are almost unmitigated instrumentalities of corruption and fraud, and that if our right to pass them under the Constitution were as clear as the sun at noonday in a cloudless sky, it would be yet the duty of every honest man to say, "let them be wiped from the statute-book."

But, before I proceed to consider their character in that respect, I hope I may be permitted to speak a little about the Constitution of the United States. I know that when a Senator rises here and says that a thing is unconstitutional, there are certain Senators who have no answer to his remark but a sneer. I think my friend from Minnesota [Mr. WINDOM] in a speech which I glanced over this morning said that we objected as usual to the constitutionality of something. That is to say, if a given measure is proposed here and we say it is unconstitutional, that is "as usual;" that it is our common answer to say that a thing is unconstitutional.

Mr. President, it will be a sad day for this country when an objection to a measure that it is unconstitutional can be put down by a sneer of that kind. I should suppose that men who before they can occupy a seat in this body have to take a solemn oath to support the Constitution of the United States would think it a matter of some little moment to know what that Constitution means, and having found what it means, to obey it. I should think that a constitutional objection made by a man who has a right to a seat upon this floor and is therefore, *prima facie* at least, a respectable and a responsible man ought to be met by something else than a sneer.

I say, and I say it in all good faith, after having made these laws which we propose to repeal a subject of much study, that, in my judgment, they are unconstitutional, and whether it is usual to say so or whether it is not usual to say so, I beg leave to say it now; and I beg leave to try and prove it. Turning to the election laws enacted by Congress, what do we find? Section 2004 reads as follows:

> All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

Of this section it is only necessary to say that it is a mere repetition of the substance of the fifteenth article of amendment of the Constitution; that, adding nothing to the force of that amendment, it does neither good nor harm and its repeal is not proposed. But now comes section 2005:

> When, under the authority of the constitution or laws of any State, or the laws of any Territory, any act is required to be done as a prerequisite or qualification for voting, and by such constitution or laws persons or officers are charged with the duty of furnishing to citizens an opportunity to perform such prerequisite, or to become qualified to vote, every such person and officer shall give to all citizens of the United States the same and equal opportunity to perform such prerequisite, and to become qualified to vote.

Then, by section 2006, a refusal to do so on the part of the officer subjects him to a heavy penalty. Then, section 2007 provides that:

> Whenever under the authority of the constitution or laws of any State, or the laws of any Territory, any act is required to be done by a citizen as a prerequisite to qualify or entitle him to vote, the offer of such citizen to perform the act required to be done shall, if it fail to be carried into execution by reason of the wrongful act or omission of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act; and the person so offering and failing to vote, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act.

Then section 2008 visits the judges of elections with penalties if they refuse to receive the vote. These sections 2005, 2006, and 2007 apply to all citizens of the United States. They are not in execution of the fifteenth amendment, but they are so comprehensive that they include all the citizens, the white as well as the black; the men who are born free and have always been free as well as those who have been in a condition of servitude. And they apply to all elections, not simply to elections in which the electors of President and Vice-President are chosen, or in which members of Congress are chosen, but to every election, every State election, every county election, every city, town, township, and school-district election in the whole length and breadth of the United States. They undertake to interfere directly with the conduct of State elections and regulate the reception of votes and the punishment of judges of election and registrars and tax-collectors and the like, who do not perform their duties; punish them by Federal instead of State law, and in Federal instead of State courts.

I have mentioned these sections, although they are not within the repealing clauses contained in this bill, to show what these election laws are, and to which the provisions that are sought to be repealed are subordinate. Then come the sections after them at some little distance which this bill proposes to repeal, and which provide for Federal supervisors of elections and for the interference of a host of deputy United States marshals in order to supervise and regulate the elections where members of Congress or Delegates are to be chosen.

Mr. President, having stated thus briefly what these statutes are, let us inquire where is the constitutional warrant for their enactment? But two provisions of the Constitution have been cited as warranting their enactment. These two provisions are cited in that very remarkable document, Veto No. 1, that we lately had the honor to receive from His Excellency the President of the United States, and his interpretation of the Constitution in this veto message is about as unfortunate, I must say, without meaning to be disrespectful, as his interpretation of constitutional and statute law in Veto No. 2; the one about as inaccurate as the other.

He cites, as I have said, two provisions of the Constitution in support of these election laws. First, article 1, section 4. That is in the original Constitution. Then the fifteenth amendment. What I have said already shows to every lawyer here that the fifteenth amendment does not support these laws. There is one section in the law which I read—that no man otherwise qualified shall be denied the right to vote on account of race, color, or previous condition of servitude; but, as I have observed, that might be stricken out of the statute without either good or harm being done, for it adds no force at all to the fifteenth amendment. But then the statute immediately goes on and undertakes to regulate the right of every other citizen of the United States to vote, no matter what his race, no matter what his color, no matter though he were born free and never was a slave in his life. The statute goes on to regulate his right to vote and to punish the election officers if they refuse to give effect to it. We are not left to argument about that. The Supreme Court has decided that those provisions were unconstitutional; that the fifteenth amendment confers no right upon any man to vote; that all it contains is a guarantee on the part of the United States that no man otherwise qualified shall be deprived of his vote on account of race, color, or previous condition of servitude. (U. S. *vs.* Reese *et al.*, 92 U. S. R., 214. U. S. *vs.* Cruikshank *et al.*, *id.*, 542.)

To that extent and no further may Congress go to give effect to that guarantee, that no discrimination shall be made against a man otherwise qualified to vote on account of race, color, or previous condition of servitude. But, sir, these statutes are not statutes in execution of that amendment. They are not leveled at discriminations on account of race, color, or previous condition of servitude. Let the citizen be deprived of his right to vote for *any cause*, these statutes in their terms embrace the case. For instance, in the State represented by my honored friend on my left [Mr. BAYARD] it is a law that every man must pay a certain tax before he is entitled to vote. That law applies to everybody. It applies to Senators on this floor as well as to the humblest colored man in the State. We have no such law in Ohio; but I recollect perfectly well that when I was the happy guest of my friend [Mr. BAYARD] who sits next to me, on an election day, I was much amused to see him rummage all over his house to find his tax receipt and suffer no small concern for fear that he had lost it and thereby lost his vote. That is the law in Delaware, but now these statutes come and apply to his case, and if he, born in Delaware and the son, grandson, and great grandson of freemen born in that glorious Commonwealth, should offer to pay his tax and the tax-collector should refuse to receive it, this statute takes hold of the case, although the only right to pass the statute was to protect men against discrimination on account of race, color, or previous condition of servitude.

Plainly and obviously on the face of it that law is not warranted by the fifteenth amendment, and the Supreme Court have said so again and again. In at least two cases if not in three they have so declared, and, therefore, I need not argue that question further. But suffer me to briefly repeat. There is not one word in this statute, except section 2004, which I have read, that is in execution of the guarantee contained in the fifteenth amendment that no discrimination shall me made on account of race, color, or previous condition of servitude. That guarantee is a guarantee of a right to vote, but almost every section of this statute, after you have passed those which I have read to the Senate, is for the purpose, not of guaranteeing a man's right to vote, *but of preventing a man from voting.* There is not in all the sections which we propose to repeal by this bill one single sentence that guarantees the right of any man to vote or that tends to guarantee his right to vote, be he white or black, or yellow or red. There is nothing of the kind, but there is abundant provision for preventing voters from exercising the right to vote. There is the power of a blackguard deputy marshal drawn from the lowest purlieus of New York or Philadelphia, ex-convicts of a penitentiary as some of them have been, to arrest without warrant the most decent and reputable citizen who offers to vote and hurry him off before a United States commissioner to await a hearing and thereby to lose his vote.

Mr. BAYARD. All the State officers of election.

Mr. THURMAN. All the State officers of election. They can tear the State judges of election from the seats they occupy, where they are executing the State law, and thereby put a stop to the election. No, sir, it is not a law to secure to men the right to vote, it is a law to prevent men from voting. It is not a law to enable men to exercise the elective franchise, it is a law to suppress the elective franchise. It finds no warrant within the fifteenth amendment.

Does it find any warrant in the original Constitution? The only

pretense of it is article 1, section 4. What is that? It is very short, and I ask my colleague to read it.

Mr. PENDLETON. Article 1, section 4, provides that:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators.

Mr. THURMAN. In the first place, it is to be observed that this provision in the Constitution relates simply to the election of Senators and Representatives in Congress. In the second place, the power given to Congress is the power to make regulations in respect to the times, places, and manner of holding elections, or to alter the regulations when made by a State, with the limitation that they shall not change the places fixed by the State authorities for choosing Senators. It is obvious that the laws now under consideration and which we propose to repeal are not exertions of the power to prescribe the time or place of holding elections because they do no such thing. If, therefore, they are authorized by this section of the Constitution it must be in virtue of the word "manner." That is the only word that is left.

The question then is: Are these statutes an exercise of the power of Congress to regulate the *manner* of electing members of the House of Representatives?

The first thing that will attract the attention of any one who will study this subject is that the principal object of this provision in the Constitution is to enable the Federal Government to preserve its existence. That is the principal object. Indeed that is the only object stated in the fifty-eighth number of the Federalist, (Dawson's ed.,) which treats of this provision. It is true that in the fifty-ninth number some other considerations are suggested, but they are only suggested. The great ground upon which the propriety of this provision is placed is stated in the fifty-eighth number, and it is that the provision is necessary to enable the Federal Government to preserve its own existence. That being the case it may be argued with no little plausibility that this power can only be exercised by Congress in order to provide for a case or cases in which a State shall fail to provide for such elections. But I do not press this point. It is not at this time necessary to decide it, and in general it is not wise to attempt to decide constitutional questions before they arise. But to show that I am right I beg leave to refer to the Federalist for a moment in order that you may see what was the opinion of the fathers of the Constitution upon that subject. I read from number fifty-eight, Dawson's edition:

> The natural order of the subject leads us to consider, in this place, that provision of the Constitution which authorizes the National Legislature to regulate, in the last resort, the election of its own members.

After quoting the Constitution and referring to what had been said against that provision, it then proceeds to defend it in these words:

> Its propriety rests upon the evidence of this plain proposition, that *every government ought to contain in itself the means of its own preservation.*

That is the proposition on which it rests according to the Federalist. Further down it says:

> It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed; that it must either have been lodged wholly in the National Legislature, or wholly in the State Legislatures, or primarily in the latter, and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have submitted the regulation of elections for the Federal Government, in the first instance, to the local administrations, which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever *extraordinary* circumstances might render that interposition necessary—

To what?

> *to its safety.*

That is the ground upon which it was placed. Now, I do not say, because I do not wish to anticipate a question that it is not now necessary to decide, that the power of Congress in this respect is limited to the case in which a State shall have failed to provide for elections. "Sufficient unto the day is the evil thereof."

I go to another proposition which I hold is capable of demonstration, and that is, that whether the right of Congress to regulate the manner of congressional elections when there is no default on the part of the State exists or does not exist, the laws which this bill proposes to repeal are not a constitutional exercise of the power, *for it is fundamental that Congress cannot under article 1, section 4, interfere in any manner with the election of State officers.* It can no more do it, under the pretense of regulating congressional elections, than it can when no Congressmen are to be elected. It follows that any regulation of congressional elections enacted by Congress must be so framed as not to interfere with the election of State officers. If it do so interfere, it is unconstitutional. Upon that I stand with a consciousness of being in the right that I hope is not presumptuous. To me no legal proposition ever appeared clearer. There are two classes of elections in this country. There is an election for Federal officers, Representatives and Senators in the Congress, and electors of President and Vice-President; if the latter can properly be called Federal officers. There is another class of elections for the officers of a State and her subdivisions. With the elections of this latter class, Congress under this clause of the Constitution has no more right to interfere than it has to interfere with the elections in France. So far as it can interfere at all, it is under the fifteenth amendment, and that is simply to guarantee the right of men otherwise qualified against a discrimination on account of race, color, or previous condition of servitude. But that guarantee, I have shown, has nothing to do here. Here the question is not about objections of race, color, or previous condition of servitude, but it is whether Congress under the pretense of regulating congressional elections can in effect regulate the elections of State officers too, and that in direct violation of the laws and the rights of the States.

Sir, did our fathers ever think for a moment when they were placing that provision in the Constitution authorizing Congress to make regulations in respect of the times, places, and manner of electing members of the House of Representatives or Senators in Congress that they were giving Congress plenary power over the election of State officers? Was that their opinion? That it was not their opinion we may easily see by the forcible language in this same fifty-eighth number of the Federalist. I will thank my friend from West Virginia to read it. He has a good, clear voice, and I ask him to read it, and with emphasis, too.

Mr. HEREFORD. It is as follows:

> Suppose an article had been introduced into the Constitution empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it both as an unwarrantable transposition of power and as a premeditated engine for the destruction of the State governments? The violation of principle in this case would have required no comment, and to an unbiased observer it will not be less apparent in the project of subjecting the existence of the National Government in a similar respect to the pleasure of the State governments. An impartial view of the matter cannot fail to result in a conviction that each as far as possible ought to depend on itself for its own preservation.

Mr. THURMAN. If our forefathers in the convention should have put a clause in the Constitution that would warrant what these laws attempt, they knew that the whole instrument would be rejected, and rejected with scorn and indignation. Sir, I ask what do these laws effect? Do they not interfere with the election of State officers? How is it that when thousands, I believe that I am not going too far in saying thousands, of men who claimed the right to vote, and who so far as we know had the right to vote, at the last election in the city of New York, were arrested by Federal officers, dragged from the polls before Mr. Commissioner Davenport, put in a cage, as many as the cage would hold, kept there until the election was over, and others only admitted to bail on the condition that they would promise not to vote, others again only on condition that they would surrender their naturalization papers—papers that he had no more right to take from them than he had to take their goods and chattles—when that was done, was that not interference with the election of the officers of the State? Was that simply a regulation of the manner of electing members of Congress? Was that not an interference with the election of the members of the Legislature of the State who were to be chosen at that election? Was it not an interference with the election of one of the judges of the highest judicial tribunal of that State then to be chosen? Was it not an interference with the election of every State officer who was voted for at that election? Who can deny it? Nobody can. And, sir, will you tell me that Congress, under the power to regulate the manner of elections in the choice of members of Congress, can frame a law in such wise as really to authorize a deputy marshal of the United States to tear the State judges of election from their seats and confine them in prison and stop the election, and that all that is not interfering with the rights of the States to hold their elections for State officers according to their own laws? Will you tell me that that is the exercise of the power to regulate the manner of electing members of Congress? No sir, it will not stand one moment's examination. There are some things so clear that argument upon them only serves to obscure them, and this is one of them. A man would be absurd who should argue that two and two do not make four; but he would be scarcely more absurd than he who should argue that laws which permit the interference of which I have spoken can be sustained under the provision of the Constitution authorizing Congress to regulate the manner of electing members of Congress.

What follows, Mr. President, from this? Congress has the power to make regulations respecting the manner of electing members of the House of Representatives. Undoubtedly it has. Whether that power is limited, as I first suggested it might possibly be, or whether it is much broader than that and applies to a State which has provided such regulations or not, there is one thing, I repeat, that is fundamental, to wit: that Congress in the exercise of that power shall so legislate as not to interfere with the right of the State in the choice of her own officers. Congress has, it will be admitted, authority to do that; for, mark it, this provision of the Constitution does not stop with saying that Congress shall have the power to regulate the manner of such elections; it authorizes it, in respect to the election of members of the House of Representatives, to prescribe not only the manner but also the time and the place of election, so that it is perfectly easy to avoid all conflict with State authority and all interference in State elections.

Mr. BAYARD. The State cannot avoid it.

Mr. THURMAN. No, the State cannot avoid it, as my friend suggests. Some one has said that the State might avoid it because it might provide that its election should be held upon a certain day different from that provided by the act of Congress for the election of members of the House of Representatives; but a Congress bent on extending its power, bent on usurping power over the State elections,

might immediately change the times of holding the congressional elections and fix them on the very days of holding the State elections. But if Congress will take the matter in hand, if it will disgrace the State, if it will write a brand of infamy on the brow of every State officer engaged in conducting elections and say he is not to be trusted, if it will ignore our history for three-fourths of a century, if it will say that every State officer is a felon, for God's sake let it keep within its own powers and do it in a way about which there can be no mistake. Let it provide that the election of members of Congress shall be so many days before or so many days after the State election, and then let it provide its own agencies for carrying on that congressional election, or let it permit the State to provide for it as it may see fit. My friend from California [Mr. FARLEY] suggests to me that in his own State every State officer, from the highest to the lowest, is elected on the same day that Congressmen are elected. But under the pretense of the power to regulate the manner of choosing members of the House of Representatives, this Government thrusts its arm in and with its money, (which it has spent heretofore in that State with no stinted hand to control elections,) and with its hundreds, ay, more than a thousand, deputy marshals and supervisors which it has employed there in the past and which it may employ again next fall if the laws remain unchanged, it interferes directly with the choice of every State officer. When a Senator shows up so flagrant a usurpation as this, my friend from Minnesota says his objection is simply "as usual" that the law is unconstitutional. God forbid that such objections should not be usual with me. When such an objection ceases to be usual with me it will be when I myself shall have ceased to have the power to make it.

I might show more instances in which these statutes interfere with the right of a State to regulate her own elections. I have already mentioned two of them. Here is a State which requires a registration before any man can vote for a State officer, and which provides officers who are to judge of the right of a man to register. They act under oath, they render a solemn and an honest judgment as to the right of the man to vote; but then steps in this Federal statute and says that if the man will swear that he was qualified and offered to register and was rejected the judges of election must disregard the State law and permit him to vote, although in their opinion as well as in that of the registrar he is not a qualified elector. They must give effect to his false affidavit.

I referred awhile ago to the fact that there is a State law in certain States requiring a man to pay a tax before he shall be entitled to vote. Suppose a man presents himself at an election for State or municipal officers in one of those States and offers to vote. The judges of election say to him: "Have you paid your tax?" He answers, "No; but I offered to pay it, and the collector of taxes refused to receive it." The collector and perhaps half a dozen others, who were present at the alleged time and place of offer of payment, step up and make oath that no such offer was made. The testimony is conclusive and indubitable that the man's affidavit is false. What must the judges do? Under the State law they are bound to reject the vote, and they have sworn to obey that law. But here steps in this law, enacted by Congress, and says to them: "You shall receive it; and if you refuse to do so, you shall pay this false swearer and would-be-fraudulent voter $500 and costs and may be counsel fees, if he see fit to sue you."

But if these laws were constitutional they ought nevertheless to be repealed, for instead of being in the interest of pure and honest elections the wit of man never yet devised a better instrumentality to promote fraud, corruption, and oppression than are these laws; and for that reason they ought to be repealed.

Mr. President, I recollect something about the passage of these laws. I am sorry to say that they passed under my eyes. I did what an humble man could do to prevent their passage. There were about half a dozen democrats here at that time, perhaps eight or more, and we sat away around yonder in the northwest corner, a very small squad, while the seats in all the rest of the Chamber were filled by our opponents.

Mr. CONKLING. What does the Senator say, that there were but half a dozen?

Mr. THURMAN. I said half a dozen democratic Senators, more or less. There were eight or nine of us, to be more accurate.

Mr. CONKLING. Only eight democratic Senators?

Mr. THURMAN. I will make it a dozen, if necessary.

Mr. CONKLING. If eight made all the noise that was made on that occasion it must have been an extraordinary eight.

Mr. THURMAN. I will tell you that those eight men were inspired on that occasion. They were inspired, and they stood up for the Constitution, they stood up for honest elections. They made, as the Senator says, much noise, but it was something besides noise. It was not *vox et præterea nihil;* it was argument, and an argument that has told, an argument that has filled these seats from the seven we occupied when I first came into the Senate until we have crossed the Jordan, [pointing to the middle aisle,] and got into the promised land. We did make a great deal of noise about these laws.

Now, let us see how these laws purify elections. I said that I was here when they passed. I recollect the debate very well. It lasted a long time. What was the principal reason urged, that which seemed to have most weight for passing them? It was said that it was necessary to pass them in order to protect the poor freedmen down South from the kuklux and the white-leaguers and the Lord knows what. I did not believe it then, and history has demonstrated that my incredulity was well founded. Let us see whether or not these laws have been used to protect the poor freedmen down South, or whether they have been used to oppress the freemen of the North.

First, let me show where the laws originated. Did they originate in the South among the poor freedmen? Did they originate in the fertile brains of that historical class of people called "carpet-baggers" who took upon themselves the peculiar guardianship of the poor freedmen? Not a bit of it. They did not originate anywhere near that. They originated in the city of New York, and they originated in the Union League Club of the city of New York—a partisan political club. I speak from the book. If my memory is not at fault, and it is a pretty good memory for an old man, I think I can show that it was admitted in the debate on this floor that they were concocted in the Union League clubs. I do not, however, stand on any such admission as that, but I will offer a little proof of it, and that will be found in the report made by Mr. Caulfield from the Committee on Expenditures in the Department of Justice to the House of Representatives on the 5th of August, 1876, Forty-fourth Congress, first session, Report No. 800. I will begin on page 173 to read the testimony of Samuel J. Glassey. Who was Samuel J. Glassey? I never saw him; I have no knowledge of him except what he states about himself; but I should suppose that our friends on the other side of the Chamber will give credence to him as a respectable man, for he appears to have been the chief counsel employed by the Union League Club of the city of New York to get up these very laws. Therefore the presumption is that he is a respectable man; at least that ought to be the presumption on that side of the Chamber. But he took to his assistance a man who is not so respectable and who has become quite notorious, one John I. Davenport, and that duality of law and partisanship went to work. Mr. Glassey says in his sworn testimony:

> The Union League Club, on the evening of Thursday, the 5th of November, 1868, appointed a special committee to take measures to have an investigation made into the frauds alleged to have been committed at the election held on the Tuesday of that week, two days before. That committee was composed of five or six prominent members of the club, all gentlemen well known in the community; and at the instance of that committee I was retained one or two days afterward to act as counsel for the Union League Club to conduct that investigation. General John A. Foster, a well-known lawyer of this city, was about the same time retained as my associate. He and I had a consultation together on the day after we were respectively informed that we had been selected to do that work, and arrived at an understanding between ourselves as to the manner in which it should be done, the objects to be sought, the methods to be pursued, and immediately put ourselves in communication with the committee.

That introduces the *dramatis personæ*, at least so far as the chief men are concerned. Well, how did they go to work? I ought first to say, however, that the animus with which they went to work is shown in the testimony of the same witness in this report on page 177:

> All those concerned in pressing the investigation were active republicans, and we looked for democratic frauds, although we invited by public advertisement information as to frauds perpetrated by both parties.

That is, they invited information but they did not look up any but democratic frauds. He then goes on to state how he employed Mr. Davenport. He and Mr. Davenport entered into a law partnership, and the reason of it will be apparent to anybody who reads this testimony. A large portion of the profits of that law partnership came out of the United States by means of these election laws. But finally they quarreled. It is said "When thieves fall out honest men get their dues." These fellows did fall out, and Glassey sued Davenport for his share, but the honest men, the people of the United States, never did get their dues and never will. As to how these laws originated, Mr. Glassey says:

> All the business growing out of that employment—

That was the investigation—

> was terminated in the spring of 1869.

One would suppose then that there was an end to that committee. Not a bit of it—

> In the early summer of 1870 application was made, at the instance of the Union League Club mainly, to Congress for the passage of laws intended—
>
> Question. Omit so far as possible these party references?
>
> Answer. Bills were introduced in both Houses of Congress, relating to the regulation by United States authorities of elections for members of Congress, and the amendments of the law regulating naturalization, and two bills were passed, one in May and another in July. In November, 1869, I took Mr. Davenport into partnership in my law business.

Another question:

> Q. Was he not appointed supervisor in 1871?
>
> A. Yes, sir; I think so, but my business relations with him closed within a very few days after that, and I don't think that I was aware that he had actually received the appointment when I dissolved the partnership. Down to the 1st of May, 1871, there had not been opportunity or occasion for any action, officially or otherwise, on his part, in relation to elections, after the election held in the fall of 1870. He held no office that warranted any action on his part in regard to elections in any way, shape, or manner. The act passed on the 28th of February, 1871, was in great part of his designing—

That is the act of Congress—

> he prepared it, and at the instance of the Union League Club he went to Washington and attended to its passage. Some time during the spring of 1871, whether before or after the 1st of May I can't now distinctly recollect, I heard that he was obtaining information from the census marshals for use at elections.

That shows where this law came from, and those who were here at the time will not forget that it was a much bigger law when it came

in. It contained, I do not know how many sections. There were nearly as many sections that do not appear in the law now as were retained. And why were they not retained? Because they were sections that in effect would have disfranchised almost every naturalized citizen in the United States by the use of the instrumentalities they authorized. And they would have made it almost impossible for anybody to be naturalized, and would have given a man no security for his right to vote after he had become naturalized. I called the attention of the Senator from Indiana, now deceased, the late Mr. Morton, to those sections, and said to him, because I knew his sagacity, "Morton, you cannot support these sections." Said he, "I never saw them; let me read them." He read them, and he said to me, "I cannot support them." We democrats had the day to speak against the bill. He asked me to let him in. Said I, "Certainly, you may come in; we will be glad of it." He did come in, and he made one of the best speeches he ever made in his life; and in that speech he characterized those provisions in regard to naturalization as provisions to make a law-suit of the right of every naturalized citizen to vote. Well, we got those provisions out, but the rest remained.

Here is the way these laws originated, not at all in the interest of the freedmen of the South, as has been so often contended, but solely for the purpose, or mainly for the purpose, of controlling the elections of the city of New York, and by that means of the great State of New York.

Now, how have they been executed? Their execution proves just what I say. Let me give you some few figures upon that subject taken from the official reports of the Attorney-General and from the reports of investigating committees. In 1876 under these laws there were 4,863 supervisors of election appointed, and of those 1,779 were appointed in the State of New York, nearly one-half of them in that single State. Again, there were 11,610 marshals appointed and more than one-fourth of them were appointed in the State of New York. But now look where the money was spent, for that is the main point. There was expended under those acts in that year the sum of $285,921.27. How much of it was expended to protect the poor freedmen at the South? In the Southern States, to wit, Alabama, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia, $48,719.86 were spent, while in the other States $237,202.21. That is to say, one-sixth of the money was spent in the South and five-sixths of it was spent in the North. That is the way they protected the poor freedman. They had given him the right to vote, they had compelled the South in self-defense to give him the right to vote. They guaranteed him against any discrimination on account of race, color, or previous condition of servitude; but when it came to using the money of the United States, for $1 that they gave to protect him, to guarantee him, they spent $5 to corrupt elections at the North and to deprive men of their right to vote at the North.

Yet the proposition to repeal these laws, which were thus brought to bear upon the people of the North, to oppress them and to tread under the iron heel of despotism the naturalized citizens of this country, is all a device, we are told, of "the confederate brigadiers!" I wonder that they have the face to show themselves in this Chamber when they have such a diabolical intent! They are bad men, for they say that you ought not to spend two hundred and odd thousand dollars to deprive northern freemen of the right to vote, to steal the naturalization papers of naturalized citizens or take them from them by main force, as Davenport has done, and incarcerate them in cages! We say you ought not to treat freemen of the North in that way. We protest against it. We protest against it in the name of liberty and fair play; yet when we do this it is a southern conspiracy, forsooth, to dissolve the Union!

But, Mr. President, let us go on. How much of those $285,921 do you suppose was spent in New York? We have seen that the bills originated there. As to how much was spent for the benefit of the poor freedmen, I have already spoken. How much of it was to regulate and control elections in New York? How much was used to bribe voters in the way of giving fees to deputy marshals who could be employed for ten days as the law then stood? How much of it was used for the purpose of bribing men in that way? The Senator from New York [Mr. CONKLING] spoke the other day, if I heard him aright; his vocabulary is so rich that I cannot follow him, but I believe there was something about thugs, shoulder-hitters, and gutter-snipes, and a great variety of chaste epithets that he applied to some of the people of the State that he has the honor in part to represent. Of course he does not represent these fellows at all. But if New York were dragged through, to use the Senator's own expression, from Harlem River to the Battery, there could not be found in it a worse set of men than a great number of the deputy marshals who were selected in 1876 and again in 1878 to execute these laws. How much of this money was paid in order to fix up the elections in New York City? I have shown you that the total expenditure was $285,921. Of that $156,000, being more than half the whole amount, was spent in the State of New York. That is the way the right of the freedmen to vote without objection on account of race, color, or previous condition, was enforced. New York City was devoted to the enforcement of the right of the freedmen, though they had been voting there ever since the constitution of 1821. I may be mistaken as to the date, but if my memory is correct, colored men voted there long before I had a right to vote in my own State. But it was so important to shield them under this guarantee in the Constitution that they had to take of the money of the people of the United States nearly $156,000 in order to execute this guarantee in the city of New York. Then, coming a little way down, they spent $37,000 in Pennsylvania. Why did they not spend more in that State? Because in the city of Philadelphia they had the whole police in their hands, they had the whole machinery in their hands, and those fellows laughed to scorn the idea of having the United States interfere in their nice way of managing elections. They were fully competent to do that themselves. They never failed to manage the elections in Philadelphia. When the emergency came no man ever knew them to fail. It is only necessary to send word to them how much republican majority they must have in Philadelphia to carry the State, and it is just as certain to be returned (I will not say voted or cast, but it is just as certain that there will be a returning board that will return so many votes) as it is that the sun will rise over that peaceful State.

So they did not need any money there, but still the fellows who like to fatten upon political employment, the fellows who want their share of any good thing that is going around, those kind of fellows described by the Senator from New York, and who are not all confined to the city of New York, and some of whom can be found between the Schuylkill and the Delaware, in the ancient city of Philadelphia, insisted that they should have their share. They were not going to let the bummers in New York get all this money; not they. They insisted on having a share, and therefore there was vouchsafed to them the sum of $37,000, one-fifth of what was given to New York. Then the managers thought they would cross over the North River and give my friend from New Jersey [Mr. RANDOLPH] a small tilt, because there is Jersey City, that lies right opposite to New York—and it is a pretty large city—and there is Newark, and there are many other towns round about there; but those fellows in Jersey City and Newark, only a few miles from New York, could not bear to see these bummers and thugs and shoulder-hitters flourishing in the State of New York, as deputy marshals, receiving a large sum per diem and employed ever so long, and they get nothing; and so the little sum of $12,000 was given to New Jersey. It was not much, but still it was something, and helped to pacify the brethren. Then they came down into your State, Mr. President, [Mr. WHYTE in the chair,] for the Baltimore people are pretty smart people, especially in the matter of elections. They have been uncommonly smart and very pointed sometimes in times that have gone by. So, to satisfy the republicans of Baltimore, of the class described by the Senator from New York, they gave to Maryland $12,000. Thus these four States, New York, Pennsylvania, New Jersey, and Maryland, absorbed $217,000 of the $285,000, leaving to the other thirty-four States the sum of $68,571.25. And this is the law for the preservation of the purity of elections; this is the law that it is monstrous that we should touch!

Mr. President, when my friend from New York [Mr. KERNAN] was speaking yesterday and saying that these laws ought to be blotted out, I saw in the classic face of my friend from Massachusetts, [Mr. HOAR,] recollecting his Harvard education, that he was exclaiming to himself:

Procul, O! procul este profani.

He was shocked that the Senator from New York should want to lay his sacrilegious hands upon those most holy and great institutions of American freedom and purity.

But let us pass on; and I must pass on or I shall never get through. Let us come to 1878, and we shall find another specimen of the same thing. The supervisors appointed in 1878 were 4,881. Of these, 1,953, nearly one-half, were appointed in New York, and 1,682 were appointed in Pennsylvania. That made 3,635 in those two States alone, leaving only 1,246 for all the other States in the Union. That is the way they took care of the poor freedmen at the South. Of the deputy marshals 4,725 were appointed, and of these about one-half, 2,308 were appointed in New York, and in all the other States of the Union only 2,417 were appointed. That made of supervisors and marshals 9,606. The expenditures were $222,714.22, for I want to be precise; and in the Southern States from which returns were made, to wit, Alabama, Georgia, Kentucky, Louisiana, South Carolina, and Virginia, what portion do you suppose was expended of this $222,000? Of course you would suppose that as the kuklux raged down there, as the white-leaguers raged down there, as there was no such thing as free elections down there, as the poor negroes were massacred in order that the whites might carry the elections, you would suppose, as all that took place, according to radical authority, that that was the place where the most of the deputy marshals of the United States were appointed and where most of the money was spent. But singularly enough, of this $222,714.22 expended in 1878, the amount used in the South was just $18,241.06; that is to say, about one-twelfth of the whole expenditure, while eleven-twelfths of it was expended in the North. Why was it expended in the North? Let the gains of the republican party in New York, in New Jersey, and in Pennsylvania answer the question why it was expended there. The gains in the House of Representatives will answer it better than anything else can answer it. At one single election there was a gain of more than fourteen members of the House of Representatives, and singularly enough the greater the expenditure of money the greater was the gain of republican members of Congress.

Mr. RANDOLPH. Will the Senator from Ohio allow me to emphasize his statement?

Mr. THURMAN. With the greatest pleasure in the world.

Mr. RANDOLPH. I will take only a moment. The congressional district in which Jersey City is situated has a democratic majority of from five to seven thousand usually, and a democratic member of the House of Representatives has been returned for many Congresses. There is now a republican member from the Jersey City district, the district in which much of the $18,000 heretofore alluded to by the Senator from Ohio as having been expended in New Jersey——

Mr. HOAR. Were there not two democratic candidates running, allow me to inquire?

Mr. RANDOLPH. No, sir; I do not understand that to be the case. There was but one recognized democratic nominee.

Mr. HOAR. But one regular nominee.

Mr. RANDOLPH. A moment. The split was partly brought about by the very——

Mr. THURMAN. I fear that the dialogue between my two friends will take too much time.

Mr. CONKLING. Let us hear about the other democratic candidate who was irregular.

The PRESIDING OFFICER. The Senator from Ohio declines to yield further.

Mr. CONKLING. I hope the Senator from New Jersey will not stop before we hear about the other democratic nominee who was irregular.

Mr. RANDOLPH. Mr. President, I notice the language of the Senator from Massachusetts; I notice the manner of the Senator from Massachusetts upon this floor; and I notice that his was not a fair question under the circumstances. If I am permitted, I shall take occasion if it be necessary before this debate closes, when I am not interrupting the Senator from Ohio, to make a statement more forcible than I have made upon this subject. I state again that the moneys expended in the district where Jersey City lies were of such moment, had such force, such potency, that they had largely to do with taking away the Representative from the democratic party in a district that has given a majority of from four to five thousand for that party for a long number of years; and I have no doubt the same fact is true in regard to New York at several elections.

Mr. CONKLING. Oh, yes; wherever we get an honest vote.

Mr. THURMAN. Mr. President, although it is not the most important part of the history of these laws, it is still an important part to show whether they are made the instrumentalities of money-making and corruption by those who use this money. I had occasion when I spoke a few words on the subject of these laws at the last session to call attention to the testimony taken in a case from Saint Louis, the case of Frost *vs.* Metcalfe, I believe it was, in which the way this money was used and this power of appointing deputy marshals was used is very truly and clearly stated. The way was to send to a man that they thought was purchasable and ask him if he was a democrat and whether if he were appointed a deputy marshal he would agree to work for and vote for the republican candidate. If he said yes, he was appointed; if he said no, he was dismissed. So that went on; and I think they appointed over a thousand in the city of Saint Louis, and the effect on the election was very easily to be perceived.

That is one way in which this money of the people is used. I could show you in this document the testimony of a man bearing on this point, although I do not attach much importance to it, because he belongs to the detective service, and I have learned to distrust almost everything that one of these fellows says; but here he tells a story that looks like a very plain one as to how he and others changed in the Italian part of the city of New York fifteen hundred democratic voters into good republican voters by manipulation and the means furnished by the secret-service fund.

Sir, the truth is, and it cannot be successfully denied, that these laws simply furnish an electioneering and a corruption fund out of the public Treasury for the benefit of the party that is in power and for the benefit so far of the republican party. If the democrats were to get into power on the 4th of March, 1881, if there was such a blessing to the country as a democratic President, these brethren on the right-hand side, unless they had confidence in his honesty because they knew he was a democrat, would clamor more loudly for the repeal of these laws than ever they have clamored against their repeal, although their voices have been loud in the land. To be sure they would. They would not for one single moment trust a democratic administration with the power over the public purse, the power over the officials of the land that these laws give, and they would wipe them out if they could in a moment. There would be another ox that was gored then, and they would claim that there should be an end of these laws.

Mr. President, that is one way; but that is not all. How have these men thrived who have engaged in this occupation? First let me call your attention to the kind of people, according to the testimony of this same Mr. Glassey, who are employed in this business:

Question. What do you say of the necessity of Federal interference in elections here in this city and the considerable expenditure of public money in that respect at the present time?

Answer. Keeping in view the laws of the State now in force——

By Mr. COCHRANE:

Q. And which have been in force how long?

A. Since 1873. I regard any action on the part of the United States as wholly unnecessary.

By Mr. MEADE:

Q. And expenditure therefore unnecessary?

A. A dead waste of public money, and also objectionable as affording an opportunity to the person who happens to hold the office of chief supervisor to distribute a great deal of patronage among the most dangerous and worthless class in the community, the lower breed of politicians.

There is another place in which he speaks of that, and gives a very graphic description of what kind of people they are. Here it is, I believe:

Question. Applications?

Answer. Applications for appointment as supervisor. For receiving those papers and putting them on file he gets ten cents apiece.

By Mr. MEADE:

Q. In 1872?

A. Yes, sir.

Q. Two thousand one hundred and forty-one applications for appointment. Then the next item is for administering over two thousand oaths to deputy marshals at ten cents apiece?

They are talking about John I. Davenport himself now.

A. There is a fee allowed by law for administering the oaths of office to supervisors and deputy marshals. That oath, of course, should only be administered to supervisors who are actually accepted for the service. As to the deputy marshals, their appointment is in the discretion of the marshal, and, in my judgment, there has been no earthly necessity for the appointment of any deputy marshal, especially for the elections since 1870, and appointing them is simply using public money for the benefit of the lower class of politicians for rendering merely nominal services.

Q. Right there, won't you illustrate the practical operation of it in local politics of employing these marshals?

A. In a city like this there are always hundreds of men who have hardly any regular employment, who are chronic seekers of small offices, hangers-on to the politicians of all grades and stripes. About the time of election they make a little money by doing miscellaneous work for the candidates. It is from that class of men that these supervisors and marshals, especially the marshals, are most likely to be selected. Their pay is a per diem fixed by law, and for as many days, not exceeding ten, as the marshal and the chief supervisor may choose to certify.

Q. Might not such a power vested in the marshal be used, in the hands of an improper man, for purposes of corruption?

A. Unquestionably. The duties of a deputy marshal are purely nominal. They have no authority except to keep the peace and see that the supervisors are not interfered with in the discharge of their duties. Except under such exceptional circumstances as existed in 1870, there has not been the slightest danger of the breach of the peace; and, besides that, the municipal police, which is a regularly organized and well-disciplined force, is there for that special purpose, and, under ordinary circumstances, there is no reason to doubt the fairness and efficiency of their action. If there should be a contest between the State and national authorities, ten policemen would be worth fifty marshals. In other words, I regard the marshals, selected as they are and as they must be, as purely useless.

Now, sir, that is the testimony of the chief counsel for the Union League Club of New York. If I had time to go into the way in which the man Davenport has acted in feathering his own nest, I think it would surprise Senators to find how the public money has gone. I have no time to speak of his extortion; I have no time to speak of his enterprise; I have no time to speak of the fact proved in this testimony that in 1876 he had eight thousand affidavits made against persons, or prepared to be sworn to, months before the election, in his office, for which, or a portion of which, he charged the Government; against men he had never seen, charging them with registering long before the registry was opened in order that he might terrify naturalized citizens from voting by causing them to be arrested. And he would have issued the whole of them but this attorney called his attention to the fact that he dare not issue them before the men registered. He called his attention to the fact of the scrape he would get into, or the man who swore to them would get into, if he issued them without the men having been registered. Yet he did go on and issued about eight hundred, and three hundred arrests were made and the men taken before United States commissioners, and every single man of them but ten was discharged, and of the ten men who were detained but three, or at most five, were convicted.

What kind of a man is this? He performed the same thing lately. More than two thousand affidavits were sworn to by one of his clerks at the very last election—a man who by no possibility could know the truth of a single affidavit on which the arrests were made.

But, sir, I want to speak of some of his own personal corruption, because it is right that this man should be held up and held up to eternal infamy. I have spoken of the amount of money expended in the execution of these laws; but there is one sum of which I have not spoken, one sum to which I have not called your attention. There is a thing called "the secret-service fund" in the Treasury Department, and there have been from time to time appropriations made for the secret service of the Department of Justice, and there has been a bureau of detectives in the Treasury Department, employed sometimes by the Department of Justice, employed ostensibly to ferret out crimes against the United States. There was an appropriation of $50,000 for the secret-service fund of the Department of Justice. What do you suppose became of that money? I will tell you what became of $34,000 of it. Mr. Davenport required that he should have that sum. Mr. Williams, who was then Attorney-General, said no, there is no law for me to give you a dollar of this money; but after a while Williams consented that Whitely, the chief of this detective service, might draw the $34,000, and then he might do with it as he pleased; if he saw fit to let Davenport have it, well and good. Williams, in his testimony, if I remember correctly, says by way of excuse for his action that the President told him to let Davenport have it that way. Be that as it may, in direct violation of the law, without one single word on the statute-book to authorize it, $34,000 of that secret-service fund went into the pockets of John I. Davenport, chief supervisor. This report shows that not one dollar of it

was ever accounted for, at least not one dollar of it could the investigating committee, to whose report I have referred, find by the most searching examination was ever accounted for to the United States. Did Davenport ever render any account of what he did with the money? No, sir, not so far as the committee could discover. Williams, the Attorney-General, who had the supervision of all the expenses of his Department, secret-service fund and all, was asked did Whitely or Davenport ever make any return to you of what was done with that money, and he answered no. The committee examined the books of the Department from beginning to end for those years, and never could find one single word or one single letter or one single figure to show what became of those $34,000 that went to John Davenport. So far as I know or have heard, it has never been accounted for since. There is nothing to show what became of that money, or at least not up to the date of this report, and if there has been anything since it has escaped all the search I have been able to make.

That being the case will you wonder at a little piece of history that I will read to you. I hate to deal with such a fellow as this Davenport, but I tell you he is the most potential man in this country, made so by these laws. I say that this man, with his control of the elections of the city of New York, and through them of the elections of the great State of New York, which may determine the elections of the whole Republic, wields a power such as no human being in this land or any other land of free elections ever yet wielded, and therefore he cannot be said to be so small that we can say of him *de minimis non curat lex*. I cannot put up my senatorial nose in the air and say, I cannot take notice of this little pismire under my feet. [Laughter.] He is an elephant, sir. [Laughter.] Let us see how he has flourished. I read from the testimony of this same Mr. Glassey, on page 186:

Question. You have stated that, in 1871, Mr. Davenport's pecuniary condition was very bad?
Answer. Yes; it was.
Q. He had no funds—no means?
A. He had no means whatever.
Q. Was a borrower of you for a large amount from time to time?
A. He had overdrawn his account in our office by personal solicitation to me to meet daily expenses.
Q. I believe you further stated that he, from time to time, pleaded poverty as an excuse for not paying this sum of money?
A. He was indebted over $2,000 the 1st of May, 1871.
Q. What is his pecuniary condition now?
A. I only know by report.

This was in 1876.

Q. As to his style of living at this time?
A. From information volunteered, he lives extravagantly and is always in debt.
Q. How in reference to a horse and carriage?
A. I have been told that he keeps two carriages, but I don't know whether it is true or not.
Q. Where does he reside?
A. In Thirty-seventh street, between Lexington and Third avenues.
Q. What is the character of that portion of the city?
A. It is a very nice situation. He has a brown-stone house. It is a part of the Murray Hill district.
Q. He resides in a brown-stone house?
A. His rent is $2,250. I happen to know that, because his landlord is a client of mine.
Q. It is a rather stylish neighborhood?
A. It is a very nice neighborhood. I would like to occupy a house there myself if I could afford it.

When this bill passed which he got through Congress he went back in high spirits to the city of New York and he felt good, for he foresaw what was coming, and therefore he told his law partner what a good thing it was and that he could make money out of it, from $20,000 to $25,000 a year, and I think he has been as good as his word; I think his expectations have been fully realized, if I may judge from the testimony.

Mr. President, that is the way in which this law has been executed. If you were to go into the items of this man's accounts, what are they? Think of nineteen hundred and ninety-odd dollars for the hire of carriages. The testimony is that there was no earthly use for such expense at all. Eleven thousand dollars for indexing, and the testimony is that there was no earthly use for the indexing; it was a mere job that did not cost probably a fourth of that sum. Is it any wonder that he has prospered? But here is another nice piece of testimony: it discloses that out of the public money he paid seven hundred odd dollars of the expenses of a republican committee, but then he took care to get more back, for it is proved that he got $10,000.

Mr. President, there is another matter upon which I desired to speak but I must postpone it to another occasion. I intended when I rose to say something about the Army bill and the presidential vetoes; and yet it is rather against my will, because I prefer to stick to the text and the text is this legislative, executive, and judicial appropriation bill, which has nothing about the Army in it.

I like to stick close to my text for another reason, because it is the best way; but as I may never again address the Senate on the subject, I wish to say now that in my judgment there never was so inexcusable an exercise of the veto power since the Constitution was formed as its exercise by the President in his vetoes which he has sent to us at this session. I wish to say in respect of the first veto that it is the first time in the history of this country, so far as I know or have ever heard, that a President has vetoed a general appropriation bill. In the second place, it is the first time, if I am not mistaken, in the history of this country that a President has vetoed a bill simply because that bill repealed some existing statute. It was supposed by our fathers, when they placed the veto power in the Constitution, that its chief object would be to enable the executive department to defend itself against encroachments by the Legislature, to prevent the passage of unconstitutional measures, and in extreme cases of hasty legislation to ask a reconsideration of it by Congress; but to veto a bill making general appropriations which contained no unconstitutional provisions whatsoever, which simply repealed existing statutes, as the first bill did, and therefore could contain no unconstitutional provision, for, certainly, it was not unconstitutional in us to repeal an existing law—to veto such a bill as that, a bill not hastily adopted, a bill that had been considered at two sessions of Congress—to do that is the most unjustifiable exercise of the veto power that ever took place in this country, and that never for one moment was contemplated by those who framed the Constitution.

There is a minor matter, perhaps it is a matter simply of good taste, that also distinguishes that first veto. If I am not mistaken, it is the first time that the President of the United States in a message to Congress has seen fit to quote remarks made by Senators and Representatives in their places in Congress in order to impute to them and to the majority of Congress unworthy motives. I do not know but that I ought to thank him, for I am one of the persons whom he has seen fit to distinguish in this way. I perhaps ought to thank him that he did not send such a message to the Senate as James I sent to the House of Commons when the House of Commons presented their humble petition to know why one of their members, Sir Edwin Sandys, was imprisoned in the tower by the King's command and to know whether it was for words spoken by him in debate in the House; and the King replied that it was not for words spoken by him in debate. But passing that, his majesty said that although Sir Edwin was not detained on account of words that were spoken by him in debate, it must not be understood that he would allow members of the House of Commons to deal with matters above their comprehension and which were detrimental to his royal prerogative, and that he would retain the right to take charge of them if they did. I suppose I ought to thank my good stars that I do not live under any James I and that I do under Rutherford, and that he cannot send me to the old Capitol prison or anywhere else because I have undertaken to deal with things above my comprehension and which interfere with his most royal prerogative. I hope that this example which he has set will never be followed.

There are some other things about these messages which are very peculiar. I think everybody that read the first message understood the President as saying that under existing law troops could not be used at elections, but now in the second message he tells us in effect that the Constitution will be overthrown, for the post-office in Fremont, Ohio, and the post-offices at all the other cross-roads villages may be taken by a mob if he is not allowed to employ the military there on election days. It is necessary that the power to use the military at elections shall be preserved in order that he may defend the public property. Sir, was there ever so transparent a sham—I will not say contemptible; I want to speak respectfully of the Executive; but was there ever such transparent sophistry, if it can be dignified with that name, as this pretense that it is necessary that there shall be in the statute-book a power to use the troops to preserve the peace at elections, for that is the point, and that you shall not abolish that power for fear the President cannot defend the post-offices or custom-houses with the troops if a mob should assail them? So help me Heaven, I cannot get down quite to the level of that argument.

Sir, I did intend to say something upon the character of the debate that has taken place here. I have already alluded to it, and I do not know that it is necessary that I should say any more about it. I must, however, say, and I say it most sincerely, that I never have been more pained in all my life than I have been by the course of the debate in opposition to the bills we have passed before at this session and in opposition to this. It does seem as if there is nothing the democratic party can do, there is nothing that they can propose, which is not to be met with denunciation; nothing done or proposed that is not to be made the occasion to excite sectional hatred on the part of the people of the North toward those of the South. I appeal to every candid man in this whole land if there has been any justification for this course. I appeal to every candid man if there has been anything in the action of the democratic party in either House of Congress, and especially in the action of the southern members, which could give the slightest justification for the assaults that have been made upon the southern people and for reviving the embers of the late civil strife and seeking to perpetuate sectional animosities.

Why, Mr. President, the South is in the Union or it is not. They are equal States in the Union or they are not in the Union at all. Their citizens are equally citizens with all of us or they are not citizens at all; and if they are citizens have they not the same right to their opinions, to their feelings, and to their convictions that every other portion of the people of the United States have? Have not their States the same right to send here persons who represent their interests that the citizens of other portions of the country have? And if, judging correctly or incorrectly of the effect of your laws, of the effect of the course that you have pursued toward them, they find themselves of one opinion, and are, therefore, for the time being what is called "a solid South" because they see things in that light, is that any justification for preaching a crusade against them and making northern men hate them now and forever?

Mr. President, if such appeals can have the effect to make a solid North to rule forever one section of the country, then I for one shall despair of there ever being a real Union in this country, and I warn the men who are engaged in fomenting sectionalism that sectionalism may be marked by other lines in the future than Mason and Dixon's. Sectionalism may take other shapes, and men who are now most fervent in denouncing the solid South and seeking to solidify the North may live to see another solidarity whose rule it may be difficult, if not impossible, to resist. [Applause in the galleries.]

It is the right and duty of the National Government to have its Constitution and laws interpreted and applied by its own judicial tribunals—The Government must not abandon its officers.

SPEECH OF HON. HARRY WHITE,

OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, June 5, 1879.

The House having under consideration the bill (H. R. No. 1715) to repeal certain sections of the Revised Statutes and to amend certain sections of the Revised Statutes and of the Statutes at Large relating to the removal of causes from State courts—

Mr. WHITE said:

Mr. SPEAKER: On entering the Chamber a few moments since, I did not design to address the House on the pending bill. I am obliged, however, to my friend from Illinois, [Mr. THOMAS,] a member of the committee reporting the bill, for an opportunity to discuss this most important measure. An act so rudely invading the well-established jurisprudence of the nation should be most patiently considered; and, sir, with all respect to the Committee on the Revision of the Laws reporting it, I submit it should first have been considered by the Judiciary Committee of the House. I said this was an important measure. Nothing, sir, has been before this Congress more likely, if it passes, to immediately gravely affect the practical details of our whole revenue system.

STATE RIGHTS.

We have latterly heard much of the political heresy termed "State rights." If that is a dangerous dogma in our peculiar political system, the passage of this bill will be a most signal triumph for its advocates, and little less dangerous to a robust national authority than the firing of the first defiant gun at Sumter.

On the Plains of Abraham, near Quebec, there was erected, just after his death, a monument on the spot where Wolfe died in the very moment of his victory. Visiting this spot a few years since, I observed the rude hand of the curiosity-seeker had chipped away little by little this structure until only a vestige of the historical landmark remained. Standing at this point of observation in political events, the attentive public man can discover, as he looks at the pending and proposed measures, that "little by little" the devoted adherents of the pernicious "State-rights" theory are gaining control and enfeebling the hand of national authority.

Sir, we have discussed for weeks and have heard defiantly denied the constitutionality of the claim of the General Government to legislate for the protection of the voter at elections where United States officers were to be elected. This bill presents, indeed, but another feature of the controversy. In this we have practically announced the doctrine, that the State courts shall not have jurisdiction of complaints made by State magistrates or courts against United States officers for acts done by them under color of their offices or by authority or appointment of the United States.

THE ISSUE.

Pause with me a moment and hear the precise issue the bill presents. It is entitled "A bill to repeal certain sections of the Revised Statutes and to amend certain sections of the Revised Statutes and of the Statutes at Large relating to the removal of causes from State courts." Follow me as I inform you, briefly, what it proposes to do. I shall not discourse upon every detail of the bill, but only examine its most prominent and objectionable features.

Its first section provides for the repeal of existing laws, as recited in sections 639 and 647 of the Revised Statutes of the United States. These sections supply the method of removal into the United States circuit court for the district where such suit is pending from the State court in which it has been brought, as follows:

First. When the suit is against an alien or is by a citizen of the State wherein it is brought and against a citizen of another State, it may be removed on petition of such defendant filed in the State court at the time of his appearance.

Second. When the suit is against an alien and a citizen of the State wherein it is brought, or is by a citizen of such State against a citizen of the same and a citizen of another State, it may be removed as against said alien citizen or citizen of another State on petition of such alien or citizen of another State filed at any time before trial; such removal not to prejudice the right to proceed against the other defendants in the State court.

Third. When a suit is between a citizen of the State in which it is brought and a citizen of another State, it may be removed on the petition of the latter, whether he be plaintiff or defendant, filed any time before trial if before or at time of filing said petition he makes and files an affidavit that he has reason to believe, from prejudice or local influence, he will not be able to obtain justice in such State court.

Fourth. For the removal of suits where the title to real estate is involved and the parties to the action claim the land under grant from different States and the amount in controversy exceeds the sum of $500.

In each of these sections, which I have substantially epitomized, careful provision is made in detail to secure all parties in their proper rights.

Most of these provisions were enacted in the original judiciary act of September 24, 1789. They have grown hoary with years, sanctioned by the wisdom of judicial approval. Many rights have vested under them. But I have no time now to tarry and discuss in detail this feature of the bill.

The more prominent and objectionable features, however, of this measure are those which seek to change and modify sections 641, 642, and 643 of the United States Revised Statutes, being the existing law.

PROSECUTIONS AGAINST UNITED STATES OFFICERS.

By the proposed modification the right now, secured by Congress, to a certain class of persons and United States officers, when prosecuted in State courts, for acts done in executing the duties of their offices, to have their cases removed to and disposed of in the courts of the United States, will be taken away and the prosecuted left to the tender mercies of the courts and juries in the localities where arrested, there to be tried, where prejudices against the persons and the duties of the officers prosecuted and the General Government they represent, are more potent than the instincts of humanity or the voice of justice.

Sir, it is to this latter feature of the pending bill I will more particularly speak. Sections 641 and 642, which are to be repealed so far as relates to removal of prosecutions, are portions of what is known as the civil-rights bill of 1870. These sections authorized, upon careful terms, the removal from the State courts to the Federal courts prosecutions against persons "who are denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where the proceeding is pending, any right secured to him by any law providing for the equal rights of citizens of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for such equal rights." The propriety of allowing the removal of prosecutions in such cases from the State to the United States courts cannot, I fancy, be seriously questioned. That feature of the bill which changes section 643 of existing law is most dangerous to every officer of the Government engaged in collecting the revenues, and may be a fatal blow to the proper enforcement of our internal-revenue system in the southern portion of the country.

SECTION 643.

Pardon me while I state distinctly how practical and serious a question this is. Now, sir, the existing section 643 of the United States statutes provides, "When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or is commenced against any officer of the United States or other persons on account of any act done under the provisions of title 24, 'the elective franchise,' or on account of any right, title, or authority claimed by such officer or other person under any of the said provisions, the said suit or prosecution may" be removed from such State courts, in which it has been instituted, into the circuit court of the United States for the proper district, upon the terms carefully provided in the section.

OR PROSECUTION.

You will observe the pending bill seeks to change the law just referred to by striking out the words "or prosecution" wherever they occur in the section, so that hereafter when the United States customs officer or the United States collector of internal revenue, or any of his officers, may be, in the discharge of their official duties, required to use proper force or do some other act unpleasant to the illicit distiller, the moonshiner, or other delinquent and defiant United States tax-payer, such officer may be arrested under process from a State court in a locality where the whole community is hostile to the United States revenue system, where illicit whisky stilling and tobacco smuggling are popular and encouraged, thrown into prison and no relief assured except, possibly, through the slow processes of the unfriendly State court. To such a condition would the advocates of this bill bring United States officials who are honestly and vigorously collecting the revenues necessary for the life of your Government.

WIPING OUT WAR MEASURES.

Sir, we have heard much lately about wiping from the statute-book the legislation the war against rebellion suggested. While true it is the great debt this war placed upon the nation made it necessary to look up the safest, most acceptable, and convenient sources of revenue, yet the law you seek to repeal was not the offspring of what some are pleased to term "radical war legislation." These were not "the last vestiges of your war measures * * * born of the passions incident to civil strife, and looked alone to the abridgement of the liberty of the citizen," quoting the language of the gentleman from Kentucky, [Mr. BLACKBURN,] when proclaiming a short time since on this floor the intention of his party toward the legislation enacted to save to the country the results of the war. Sir, in sustaining the laws indicated, which the pending bill proposes "to wipe out" and destroy, we stand in the "ancient ways of the Republic with all her original altar fires about her."

EARLY STATESMEN MADE THESE LAWS.

While recent events have illustrated their wisdom, yet the policy of the existing statutes was inaugurated in the early days of our history, and, indeed, then actually enacted into law by lawyers and statesmen who have made the American Congress conspicuous above all parliamentary assemblages.

I repeat, sir, you are not now here seeking to destroy or "wipe out" what gentlemen of the opposition choose to denominate "radical legislation," but to change, to repeal law, which had the sanction of the judgment and voice of Madison, of Webster, of Clayton, of Clay, of Jackson, and at one time in his life of John C. Calhoun, the Ajax Telamon of the "State-rights" doctrine.

I will not vex the ear of the House with dull recitals, but bear with me while I refer briefly to the history of this legislation. The right of an officer of the United States, when prosecuted or sued in a State court on account of any act done under color of his office, to have the same taken before and tried in the United States court was first asserted in this country by Congress in 1815, then received, as well as since, special consideration, and was practically re-enacted some seven times from 1815 to 1873. In the years 1816, 1817, 1833, 1864, 1866, 1871, and 1873 there were congressional enactments recognizing the wisdom and propriety of these provisions. It may then be considered as part of the established jurisprudence of the Government.

At one time or another it has received the deliberate approval of many of the most distinguished citizens of the United States, among whom I have already indicated Mr. Calhoun, President Madison, Mr. Webster, and conspicuously President Jackson in 1833. I say, then, this is no new question.

ALL POLITICAL SCHOOLS APPROVED.

All schools of politicians in this country have supported this policy. They who opposed the extreme doctrine of States rights, and those also who advocated it, as typified in the Virginia and Kentucky resolutions of 1798 and 1799, and in Mr. Calhoun's famous manifesto published in the Pendleton Messenger of July 26, 1831, which is the most concise epitome of the abominable heresy that I have ever seen in any public document.

ACT OF 1815.

Now, as to its history. The act of 1815, approved by President Madison February 4, 1815, was entitled "An act to prohibit intercourse with the enemy, and for other purposes," and in its eighth section enacted—

That if any suit or prosecution be commenced in any State court against any collectors, &c., or any other person aiding or assisting agreeable to the provisions of this act, or under color thereof, for any act done or omitted to be done, as an officer, &c., and the defendant shall at the time of entering his appearance in such court file a petition for the removal of the cause for trial at the next circuit court of the United States, &c., it shall then be the duty of the State court to accept the surety and proceed no further in the case, and the bail that shall have originally been given shall be discharged; and such copies being entered as aforesaid in such court of the United States, the cause shall there proceed in the same manner as if it had been brought there by original process.

This was the original statute.

Mr. McMILLIN. Will the gentleman allow me to ask him one question?

Mr. WHITE. I will.

Mr. McMILLIN. I desire to inquire if it is not the fact that the statute of 1815 applied only to civil causes and not to criminal causes, and only during the war that brought it into existence?

Mr. WHITE. It did not, I answer the gentleman. I will be glad to be informed in that respect.

Mr. TOWNSHEND, of Illinois, rose.

Mr. WHITE. One moment; let me extend my statement. I say that it did not relate exclusively to civil causes. There is an exception, which I admit the technical lawyer may stand upon, about criminal cases—a proviso which withdraws the provisions of the statute from that class of cases where the punishment for the alleged offense was corporal. I admit this may be subject to some criticism of that kind. My opinion is, when prosecutions where corporal punishment resulted from conviction were excluded, homicides when punished capitally were alone thought of.

Mr. TOWNSHEND, of Illinois. Now let me ask the gentleman a question.

Mr. WHITE. Certainly.

Mr. TOWNSHEND, of Illinois. Do you deny that the act of 1815 was a war measure which expired by its own limitation?

Mr. WHITE. Of course I do not. I was going to complete my statement. The original act on this subject, passed February 4, 1815, was to continue, mark you, only during the war. When peace was declared the law was exhausted. Another statute, similar in most respects to the one referred to, was enacted March 3, 1815, which was entitled "An act further to provide for the collection of duties on imports and tonnage." You will find this 3d Statutes, chapter 94, page 233; and what I have quoted as section 8 of act of February 4, 1815, is here re-enacted as section 6. This act was to continue but one year. April 27, 1816, it was again continued till March 3, 1817. On the latter day it was extended until March 3, 1822.

Mr. TOWNSHEND, of Illinois. My friend admits that the act of 1815 was kept in force only six years. The present act has been kept in force for more than six years.

Mr. WHITE. One moment. The gentleman should not, if he will pardon me, criticise an argument until he hears it through. With all respect to my friend I will, in a few moments, explain how that was. While proceeding to give the right of removal from State to United States courts this provision was introduced in the act of 1815:

That this act shall not be construed to apply to any prosecution for an offense involving corporal punishment.

Sir, I have here Bouvier's Law Dictionary. Lawyers recognize this authority. He defines:

Punishments are either corporal or not corporal. The former are—death, which is usually denominated capital punishment; imprisonment, which is either with or without labor; whipping in some States; banishment. Punishments which are not corporal are—fines, forfeitures, suspension or deprivation of some political or civil right; deprivation of office, and being rendered incapable to hold office.

How many offenses were there then upon the statute-books of the different States the punishment of which, upon conviction, was only fine, not accompanied by whipping or corporal violence, which existed in some of the States? Could we discover exactly the intent of the proviso I have just quoted we would doubtless learn that it was intended to exclude homicides alone from the operation of this law. Yet prosecutions for some offenses were within the purview of its provisions. It is an error, then, to say this act did not apply to criminal cases.

EMBARGO LAWS.

If you will refer to the Annals of Congress (third volume, page 1033) it will be discovered that during the war with Great Britain of 1812 Massachusetts and New England States complained of the foreign policy of the Government as destructive to their commercial interests, and the acts restrictive of their commercial relations were often violated and opposed. To effect a remedy the act I have cited, of February 4, 1815, was passed. You will observe, sir, it was not deemed wise then to abandon the customs and revenue officers of the General Government to be prosecuted and tried, for acts done by virtue of their offices, in the State courts of Massachusetts and New England, where the prejudices were so bitter against the restrictive revenue or embargo laws. Hence the first enactment for removal of such cases into United States courts.

When peace came, the original act was changed to suit the condition of the country and practically re-enacted as "an act, further to provide for the collection of duties upon imports and tonnage;" the removal feature being carefully preserved.

To sustain this position I will cite you again to Congressional Annals, volume 3, pages 1061, 1064, 1181, and 1258.

MADISON APPROVES.

A careful reading of these Annals will develop the fact that this legislation was supported as an administration measure during President Madison's term, and received the active support of Mr. Calhoun himself, who was then a Representative in this House from South Carolina.

NULLIFICATION.

In 1822 this law expired by its own limitation. Eleven years thereafter, while Mr. Jackson was President, the great crisis occurred in the execution of our revenue system. In 1833 the famous nullification controversy arose. South Carolina resisted the Government in the collection of its customs duties and passed the most defiant ordinance for resistance to the revenue laws—indeed, nullifying their operation. When the controversy was at its climax, Mr. Calhoun leading his State, President Jackson, January 16, 1833, sent a special message to Congress reciting the condition of the conflict and making recommendation for legislation. In this message he advised the passage of laws, which would authorize the United States officers to possess vessels and cargoes, seized by them for non-payment of duties, by employing the land and naval forces and the militia. Then, specially referring to these removal laws, he says:

JACKSON.

This provision, however, would not shield the officers and citizens of the United States acting under the laws, from suits and prosecutions in the tribunals of the State, &c.

* * * * * * *

It may therefore be desirable to revive, with some modifications better adapted to the occasion, the sixth section of the act of the 3d of March, 1815, * * * and to provide that in any case where suit shall be brought against any individual in the courts of the State for any act done under the laws of the United States he should be authorized to remove the said cause by petition into the circuit court of the United States without any copy of the record, and that the court shall proceed to hear and determine the same as if it had been originally instituted therein, and

that in all cases of injuries to the persons or property of individuals for disobedience to the ordinance and laws of South Carolina in pursuance thereof redress may be sought in the courts of the United States.

This is the language of "Old Hickory," claimed to be the father of modern democracy, in his message to Congress recommending the enactment of that statute which gentlemen on the other side are to-day seeking to repeal. After this message, a bill was introduced and referred to the Judiciary Committee of the Senate. As I look at the names composing that committee my respect for their action is natural. William Wilkins, of Pennsylvania, well known to my colleague, [Mr. CLYMER,] sitting before me, who represents the "so-called" Jacksonian democracy of Berks County, and indeed to the whole country. He was a most eminent lawyer, estimable gentleman, and patriotic citizen. He was always a leading democrat of our State. The other members were Daniel Webster of Massachusetts, Theodore Frelinghuysen of New Jersey, Felix Grundy of Tennessee, and Willie P. Mangum of North Carolina. The latter gentleman, an old-line whig, whose memory I respect very much, dissented, I am sorry to say, from the report of the majority of the committee on that occasion.

SENATE JUDICIARY REPORT.

The enactment now in question was reported from such a Judiciary Committee. It was at its introduction framed to protect all persons acting under color of any law of the United States, but was afterward amended so as to apply only to the troubles then existing, that is, the obstruction of the revenue laws. The third section contained the removal feature before us, the same as section 8 of act of February 4, 1815, and section 6 of act of March 3, 1815. As introduced and enacted it conspicuously omitted the proviso in the act of 1815 which excepted offenses involving corporal punishment. In this act, as in that, there is no assignment of punishment. Substantially, for all matters now in question, the two acts seem to be identical. A part of the act was temporary, but the provision under consideration was permanent and has ever since been law.

THE DEBATE.

Let me now call attention to some remarks made by Mr. Wilkins, chairman of Judiciary, when section 3, giving the right to removal of prosecutions, was under consideration. He said:

It gives the right to remove at any time before trial, but not after judgment has been given; and thus affects in no way the dignity of the State tribunals. Whether in criminal or civil cases it gives this right of removal. Has Congress power in criminal cases? He would answer the question in the affirmative. Congress had the power to give the right in criminal as well as in civil cases, because the second section of the third article of the Constitution speaks of all cases in law and equity; and these comprehensive terms cover all. * * * It was more necessary that this jurisdiction should be extended over criminal than over civil cases.—*Congressional Debates*, volume 9, part 2, 260.

Continuing, he says:

It will appear from what I have read that if it were not admitted that the Federal judiciary had jurisdiction over criminal cases, then was nullification ratified and sealed forever. A State then has nothing more to do than to declare an act a felony or a misdemeanor in order to nullify all the laws of the Union. There were numerous prejudices, prejudices peculiar to particular States, which under any other view would throw all jurisdiction into State tribunals.

But, Mr. Speaker, it is well known the Senate debate on that bill, known, in the language of the day, as the "Force bill," called out on either side splendid displays of ability by gentlemen, then in the maturity of their power of reasoning on public questions. This third section now under consideration was not so elaborately argued as might have been expected, for the reason that Mr. Calhoun had been a party to its first introduction among the statutes of the United States. At one point, however, Mr. Forsythe, of Georgia, who supported the bill in the main, moved to strike out this third section, which related to removals, on the ground of expediency, saying at the time "it would be better, he thought, for the officer to carry the cause first to the highest court of the State, and then to take an appeal to the Federal court if justice should not be obtained."

DANIEL WEBSTER.

To this the great constitutional expounder, Daniel Webster, replied, that he "thought this the most important provision of the whole bill as respects the protection of the Federal officer." Continuing further, he said, "We give a chance to the officer to defend himself where the authority of the law was recognized. There was a stronger reason now in favor of this provision than there was for the law which was created during the existence of the non-intercourse and embargo acts." Mr. Webster emphasized the importance of this legislation which you are now seeking summarily to wipe from the statute-book. The motion which Mr. Forsythe made in reference to that third section was negatived, and, mark you, by a vote of 28 to 5.

THOMAS EWING.

And at page 518 it appears that much of the machinery, now affecting the removal, was created by an amendment offered by Hon. Thomas Ewing, then a member of the Senate from Ohio. His amendment was substantially as follows. After referring to the removal forms it provided:

And thereupon it shall be the duty of the State court to stay all further proceedings, &c. * * * And any further proceedings, trial, or judgment therein in the State court shall be wholly null and void.

After supporting this proposition with a brief speech, Mr. Webster accepted it as part of the original text. It is now part of the law.

I would commend the position of Senator Ewing on that bill to his distinguished descendant upon this floor. It would further appear, that the section, as introduced for the removal purposes, was in one respect modified into the shape finally adopted by reason of the criticism of Mr. Clayton, of Delaware. The vote on the final passage of this measure, which we are now asked to repeal, was in the Senate 32 in its favor and 1 in the negative. John Tyler, of Virginia, was the only vote in the negative, although Mr. Bibb of Kentucky, Calhoun and Miller of South Carolina, King and Moore of Alabama, Troup of Georgia, and Mangum of North Carolina—eight in all—would probably have voted against it had they been present, while in the affirmative were Webster, Dallas, Wilkins, Clayton, Ewing, Silas Wright, Rives, and men of similiar character. The vote in the House was 126 to 34, and in its favor were two members from South Carolina, Messrs. Blair and Mitchell.

Now, sir, this will be discovered to be an accurate statement about the enactment of this law.

NATIONAL ABOVE STATE AUTHORITY.

The right of a State to vindicate and preserve its peace should always be subject to the greater right of the United States to preserve and vindicate its power, collect its revenues, and enforce its laws. One of such powers should be to pronounce by its own Legislature and its own judiciary what those powers are. Deny the General Government such prerogative, and the most serious consequences may follow. In his great speech in reply to Hayne on the rights of the Federal and State governments, Webster said, "that in all questions of political power between the Federal and State governments the former is the ultimate judge of the extent of its powers." There is no difference in principle, then, between the act of 1815 advocated by Mr. Calhoun and approved by Mr. Madison, and the act of 1833 advocated by Mr. Webster and approved by Mr. Jackson. These acts provided for the removal of both civil and criminal causes. Causes arising under them have been brought before some of the most eminent judges of the country, and there is no decision of any United States judge denying the constitutionality of this legislation.

SIXTY YEARS' SANCTION.

It would seem, therefore, that all the Departments, the legislative, the executive, and the judicial, of the Government, irrespective of politics, have for about sixty-four years concurred in the propriety of these laws. The legislation now proposed, is an invasion of the high powers and prerogatives the American Congress should always secure to the General Government for the protection of its own officers in the execution of United States revenue laws. This legislation is now practical in its consequences. It may not be known to all members of this House, that within the last few years the Bureau of Internal Revenue has been vexed and annoyed, time and again, by local authorities interfering with revenue officers in the execution of the laws. By this interference the efficiency of your revenue system has been crippled and impaired. In referring, sir, to an official communication from the Commissioner of Internal Revenue of May 1, 1879, not yet printed, sent to this Congress by the Secretary of the Treasury in reply to a resolution of inquiry, I find this direct information:

Two important facts remain to be stated:

1. A very serious embarrassment to the enforcement of the laws of the United States has resulted from the institution of numerous unjust criminal prosecutions in the State courts against the officers of the United States by violators of the internal-revenue laws and their friends. Especially has this been the case in North Carolina, South Carolina, and Tennessee, where in some instances the State officers and even judges on the bench have lent the weight of their influence to weaken the authority of the officers and laws of the United States.

2. The State officers and State courts, while often invoked to arrest and punish United States officers for alleged offenses, have rarely ever taken any steps to arrest or indict persons guilty of assaulting or murdering officers of the United States.

The practice of defrauding the Government and resisting its officers has become so firmly fixed that it is impossible to enforce the laws against such offenders without the presence of a force of armed men sufficiently strong to deter resistance, and, if necessary, overcome it.

OFFICERS MURDERED.

As further evidence, sir, of the practical necessity of protecting United States officers by the removal of prosecutions against them, I find in the communication referred to "that the number of illicit stills seized since January 1, 1877, in the Southern States, is 2,485; number of illicit stills seized in other States, 153; number of persons arrested in Southern States for illicit distilling, 5,281; number of persons arrested in all other States for illicit distilling, 141; number of persons killed in suppressing illicit distilling since 1877, 19; number wounded, 35." And, sir, a few days since I received the following, from an authentic source, and quote it as evidence of the facility with which revenue officers are murdered in some States:

The people of Gainesville, Georgia, are excited by the discovery of a murder which was committed two years ago, but has just come to light. Two years ago a revenue officer named Cotton disappeared mysteriously. He had just caused the arrest of a man named Dunegan for illicit distilling. James Bryant, a brother-in-law of Dunegan, openly threatened that he would kill Cotton. One day Bryant, while drunk, told a man that he had killed Cotton and hidden his body. As Bryant was a great braggart his story was not believed. The disappearance of Cotton had almost been forgotten, when, day before yesterday, Bryant, on his death-bed, confessed the deed fully and prayed for forgiveness. He said he tried to poison Cotton and failed. Exasperated at this, he found him in the woods one day and struck him a blow on the head with a stick, breaking the skull. He buried Cotton's body near his distillery. Yesterday persons searched the place Bryant had indicated and found human remains, with a skull terribly crushed. Near by was found a bottle of poison and a pistol. A coroner's inquest was held but failed to implicate any one but Bryant. Cotton was one of the most efficient men in the revenue service.—May 17, 1879.

ONE HUNDRED AND NINE OFFICERS PROSECUTED.

To be further informed of the extent of State prosecutions against United States revenue officers, I called on the Commissioner recently for information, and produce here his letter and attach it to the end of my remarks. Since July, 1876, one hundred and nine officers and employés of the Government in that service have been proceeded against in State courts by criminal prosecution for acts performed by them in the discharge of their duties under the revenue laws; these in a few districts alone of the States of North Carolina, South Carolina, Georgia, Arkansas, and Tennessee. These are but a few of the cases.

I said the policy of allowing the removal of prosecutions against United States officers to United States courts has been specially recognized in recent years. By the act of July 13, 1866, the act of 1833 was re-enacted so as to embrace the removal of "any case civil or criminal" against a person acting under the internal-revenue laws. February 28, 1871, Congress extended the same privileges to "suits or prosecutions, civil or criminal," resulting from the laws regulating the "elective franchise." All these have been digested and consolidated into what is section 643 of our Revised Statutes, which is now sought to be practically repealed.

CHARGED AS UNCONSTITUTIONAL.

But, sir, notwithstanding the high sanction these removal statutes, now to be repealed, have received from the support of Madison, of Webster, of Jackson, and such illustrious statesmen, in this debate and in some of the local courts of the Southern States, their constitutionality has been assailed. It is contended they are unconstitutional and an invasion of the right of the States to try offenders against their criminal law, and that Congress cannot deprive the State courts of exclusive jurisdiction. We might dismiss these utterances and refer such criticisms to the messages of Madison in 1815, of Jackson in 1833, and the congressional debates. But, sir, the courts—the courts of highest resort in the country have passed upon these specific questions.

WHAT THE COURTS SAY.

As early as 1816 the question arose in the case of Martin *vs.* Hunter in the Supreme Court. (1 Wheat., 335.) The precise point here was, whether a civil suit involving "a Federal ingredient" could be removed from the State to the United States court. The decision was that it could, Justice Story saying, among other things, "the judicial power of the United States extends to all cases in law and equity arising under the Constitution, the laws, and the treaties of the United States, and by cases in this clause we are to understand criminal as well as civil."

Then, again, Chief-Justice Marshall, in Cohen *vs.* Virginia, 6 Wheat., 264, delivering the opinion, decided, that criminal prosecutions by a State, where "a Federal ingredient" was involved, could constitutionally be removed from a State to a Federal court under this law, and saying:

> If State courts should deny the constitutionality of the authority to remove suits from their congnizance, in what manner could they be compelled to relinquish the jurisdiction? In respect to criminal cases there would at once be an end of all control, and the State decision would be paramount to the Constitution.

To the same effect I refer you to Osborn *vs.* United States Bank, 9 Wheat., 824.

But, sir, the criticism may be made these cases reached the United States Supreme Court only after trial and judgment in the State court, while the statutes to be repealed allow the removal before trial. I will not delay the House with any theoretical argument on this point, but remind you this exact feature of the question is *res adjudicata*, has been settled by a recent case in the United States Supreme Court. The case of Mayor *vs.* Cooper, 6 Wall., 247, not only settles this point, but is a recent approval by the present Supreme Court of the existing laws. The defendants in this case were sued in the State court of Tennessee for trespass on property. They defended on the ground the property was taken under military orders during the rebellion. The acts of Congress of 1863–'66 allowed removal to the United States circuit court for trial of any suit or prosecution "begun in the State court against any officer, civil or military, or other person, for acts done during the rebellion under color of authority from the President or under any act of Congress," the proceedings for removal in such cases being the same as provided in section 643. Petition for removal was filed in the circuit court, and the State court sent it there. After argument in the circuit court to dismiss the case and send it back to the State court, it was sent back for trial, the circuit court holding the acts of Congress allowing such removal were unconstitutional and void. This ruling was *immediately* taken to the United States Supreme Court, where, after argument, the ruling of the circuit court was reversed, and, mark you, the Supreme Court saying:

> An order will be remitted that the cause be reinstated and that the court proceed in it according to law.

MAYOR VS. COOPER.

In the opinion of the court, read in 1868, these emphatic utterances, among others, are given:

> Every variety and form of appellate jurisdiction within the sphere of the power, extending as well to the courts of the States as to those of the nation, is permitted. There is no distinction in this respect between the civil and the criminal cases.
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> It is the right and duty of the National Government to have its Constitution and laws interpreted and applied by its own judicial tribunals. * * * This is essential to the peace of the nation and to the vigor and efficiency of the Government. The courts of the several States might determine the same question in different ways—there would be no uniformity of decision. For every act of an officer, civil or military, of the United States, including alike the highest and the lowest, done under his authority, he would be liable to harassing litigation in the State courts. However regular his conduct, neither the laws nor the Constitution of the United States could avail him if the views of those tribunals and of the juries which sit in them should be adverse. The authority which he had served and obeyed would be impotent to protect him. Such a government would be one of pitiable weakness and wholly fail to meet the ends which the powers of the Constitution had in view.
>
> * * * * * * *
>
> We entertain no doubt of the constitutionality of the jurisdiction given by the acts under which this case has arisen.

To this distinguished and high authority I could add the judgment of the supreme court of North Carolina in case of the State *vs.* Hoskins, in June, 1877, where but one justice dissented from the judgment, which I find in the syllabus of the case:

> The act of Congress (United States Revised Statutes, §643) authorizing the removal of civil suits and criminal prosecutions from a State court to a circuit court of the United States is constitutional; therefore, where a defendant in an indictment for an assault and battery made affidavit that he was a revenue officer of the United States, and that the alleged offense was committed under color of his office, held, that the judge in the court below committed no error in ordering further proceedings in said court to be staid.

Had I time I should be glad to reproduce here the clear sentiments of the majority of the court in that case.

To these conclusive authorities I might add the very satisfactory exposition of the law given by Judge Ballard, of the United States circuit court of the Kentucky district, in the case of United States *ex rel.* Roberts *vs.* The Jailer, 2 Abbott, 265, wherein he says:

> By a long course of judicial decision it may now be considered as settled that this act gives relief to one in State custody, not only when he is held under a law of the State which seeks expressly to punish him for executing a law or process of the United States, but also when he is in custody under a general law of the State, which applies to all persons equally, when it appears he is justified for the act done because it was "done in pursuance of a law of the United States or of a process of a court or judge of the same."

PRECEDENTS INCREASE.

In our English legal lore somewhere it is said "the veriest dolt with a case in point is more effective than the eloquence of Demosthenes." He who wants more authority than these cited to support the constitutionality as well as the policy of these laws "would not believe were one to rise from the dead." But it has become a trite saying that history often repeats itself. It is a striking coincidence, then, that they who now oppose the repeal of these removal laws, so that our National Government, now having abolished and forbidden human slavery, may be supported and maintained in its dignity and power, can find abundant legislative and judicial precedent in the enactments, processes, and adjudications made but a few years since for the protection of the slaveholder in the recapture of his bondsmen fleeing to the generous atmosphere of freedom in the Northern States.

DR. MITCHELL'S CASE.

When I was near the threshold of manhood, in 1853, in my native town, where I yet live, I heard the mutterings of indignation everywhere among the good people there because a citizen of the community, Dr. Robert Mitchell, had been sued off at Pittsburgh in the United States court by one Van Metre, of Virginia, for the penalty given by the act of 1793 against a person who harbored a fugitive from labor. This old gentleman, his useful life long since closed, was "the pioneer abolitionist," now an honorable distinction, of western Pennsylvania. Because he extended a sheltering roof to the negro "Jared" and a companion, fleeing from bondage to liberty, this devoted philanthropist was tried in the United States court and paid the penalty of $500 and costs of many hundreds for his humanity. The United States statute was careful to take such cases from the State and confine them to the United States courts, that the uniformity and sanctity of the laws in the interest of human slavery should be maintained. Justice Grier tried this case, and it is reported in 2 Wallace, page 311.

But, sir, more direct in this connection are the cases to be found in 5 McLean, 659, *Ex parte* Marshall, and 6 McLean, 366, *Ex parte* Robinson.

EX PARTE JENKINS.

Conspicuously pertinent in this direction is the case *Ex parte* Jenkins, 2 Wall., 534. Thomas, a negro boy, was claimed in Luzerne County, Pennsylvania, as a fugitive from labor. Jenkins, the United States marshal, in arresting him, it was alleged had with others committed a riot and assault and battery with intent to kill. Information was made before the State magistrate, and they were arrested for indictment. Petition for removal was presented under the act of March, 1833, the same as section 643. Justice Grier, in deciding the application for removal, declared the certificate of the United States commissioner was "conclusive evidence of the right of the person in whose favor it is granted to remove the fugitive from labor claimed and forbids all molestation of such person by any process issued by any court judge or other person." The removal of the prosecution was ordered, and in the further course of the decision his honor declared the State courts had no right to issue in such cases a *habeas corpus* at the instance of the captured fugitive, and when prosecutions were instituted in the State courts against the marshals and United States officers for capturing the slave, although done with violence, the United States courts on the application for discharge of the officers and removal of the cases would go outside the indictment and

face of the record and hear affidavits to learn whether the capture was made under color of United States authority. And Judge Kane, sitting with Justice Grier in the same case, speaking of these removal statutes, passed in 1833, says:

> There were statesmen then who imagined it possible that a statute of the United States might be so obnoxious in a particular region, or to a particular State, or that the local functionaries would refuse to obey it and would interfere with the officers who were charged to give it force even by arresting and imprisoning them.

I will not trespass by multiplying authorities in this behalf.

UNITED STATES COURTS TRY UNDER STATE LAW.

But, Mr. Speaker, as further argument in favor of the repeal by the pending bill, it is gravely advanced the removal of the cases against the United States officers from the State to the Federal courts is a practical destruction of the suits or a full discharge, *ipso facto*, to the defendants, who have been arrested by State process for murder or other crimes, and that the United States courts have no jurisdiction to try the prosecutions for offenses against State laws. This is in a measure true, but not so in prosecutions against United States officers for offenses alleged to have been committed while doing acts under color of their duty as such officers. If there is a defect in the law, if there is a *casus omissus* here, let us—let the American Congress here supply it by proper enactment, giving the United States courts full and specific jurisdiction to try, according to State law, prosecutions and indictments for murder and for all offenses preferred under State authority against United States officers for acts done under color of their official duty.

REMOVAL DOES NOT DESTROY.

But, sir, under the existing laws I find authority for the United States courts to proceed and try civil suits or prosecutions removed there. It may be argued, sir, that the United States circuit courts have no jurisdiction to try a prosecution for murder, since jurisdiction in criminal cases is only conferred by the act of Congress creating the crime and affixing the punishment. This is the general rule in United States criminal jurisprudence. But, mark you, when the application for removal is made to the circuit court, the inquiry, if in a criminal case, is not "Is the defendant guilty?" but, in the language of Judge Ballard in the case cited, 2 Abbott, "Is he *justified* for the act done because it was done in pursuance of a law of the United States?" There is no authority, in deciding the application for removal, to pass upon the guilt or innocence of the defendant of the charges laid in the information or indictment. The query, I repeat, is, "Was the person arrested in the performance of the duties of his office when the alleged crime was committed?" If so, the case is removed and awaits trial, if the State whence it is removed or a prosecutor follows it into the United States court. Sir, the jurisdiction of the United States court is regulated, *ex vi termini*, by the law under which the suit is removed, instead of by the statutes conferring jurisdiction of actions originally instituted therein. Says the removal statute, when removed "the cause shall thereupon be entered on the docket of the circuit court, and shall proceed as a cause originally commenced in that court."

A recent and pertinent authority is instructive here. The case of Gaines *vs.* Fuentes, 2 Otto, 10, which, by the way, is a somewhat famous case, was originally brought in a parish court of Louisiana. Application for removal to the United States court was denied by the supreme court of Louisiana. It was taken thence to the United States Supreme Court. Justice Field, delivering the opinion, said:

> In authorizing and requiring the transfer of cases involving particular controversies from a State to a Federal court, the statute thereby clothed the latter court with all the authority essential to the complete adjudication of the controversy, even though it should be admitted that that court could not have taken original cognizance of the case.

Thus, sir, when your indictment against the United States officer is preferred in the State court and it is removed to the United States court, the statute giving the removal thereby clothed the latter court with all necessary authority for complete adjudication. Pardon another reference in this connection, specific and direct.

STATE VS. O'GRADY.

I find there was tried in Georgia, in the summer of 1876, the case of The State *vs.* O'Grady, in the circuit court of the United States. This was an indictment for murder, found in a State court of one of the counties of Georgia. It was against three soldiers, who composed part of the posse of the United States revenue officer, who was in search of an illicit distillery. The distillery was seized and the owner was shot, whether purposely or otherwise is not material here, by O'Grady while standing sentinel. The case was removed to the United States circuit court under section 643. Judge Wood, presiding, tried the case. The State pressed the prosecution and was represented by her attorney-general. Said the judge, in charging the jury:

> Though this case is tried in the United States court it is to be determined by the law of Georgia, and you are to decide whether, under the law, O'Grady is guilty or not of the crime of murder charged in the indictment.

The defendant was acquitted. To the same effect is the case of Mayor *vs.* Cooper, 6 Wall., 254, cited before, sent by the Supreme Court back to the United States circuit court "to be proceeded in according to law." What law? The law of the State creating the offense charged. Such principle is also recognized in the case of North Carolina *vs.* Hoskins, and also in the case cited *Ex parte* Jenkins, 2 Wall., 542 *et seq.*

Mr. Speaker, after this reference to the strong current of authority, legislative and judicial, in support of these removal laws, which the pending bill would suddenly repeal, I have done. I look upon this measure with serious alarm. This legislation would seem to be pressed, at this time, to encourage resistance to the payment of the public revenues or to paralyze national authority.

SOUTH CAROLINA CASE.

Only last summer a conspicuous case occurred in the State of South Carolina, where a Federal officer in the execution of his duty in the revenue service happened to kill a citizen by the name of Ladd. There was no invasion of State law other than every United States officer invades State law by the execution of the United States revenue laws. This officer was arrested, and when the petition for removal was presented to Judge Kershaw, the South Carolina judge, he refused to allow the removal of the case to the Federal court, claiming the right to try the defendant first in the State court. The consequence was, if I have correctly read the history of the case, the defendants were obliged to apply to the United States court for removal, together with a *habeas corpus* to relieve them from State custody. This was a prosecution coming clearly within the terms of this section 643. Yet the State judge refused to recognize the validity of the United States statute for the purpose.

A POLITICAL ISSUE.

Here is a proposed practical renewal of the State-rights controversy first inaugurated in 1833 by Mr. Calhoun against the original enactment of the law gentlemen across the way propose to repeal.

In his works, volume 1, page 330, Mr. Calhoun denied the constitutionality of the right of appeal from State courts to United States courts, and, of course, the right of removal of any civil or criminal cases against United States officers. He had changed ground from 1815, and resisted the passage in 1833 of the law now assailed. He epitomized his opposition in formal resolutions, declaring—

> That the political system under which we live is a compact, to which the people of the several States, as separate and sovereign communities, are parties.
>
> That these sovereign parties have a right to judge, each for itself, of any alleged violation of the Constitution by Congress; and, in case of such violation, to choose each for itself its own mode and measure of redress.

This pernicious political doctrine had dangerous approval in the opinion of a learned supreme judge of my State, who, in delivering a judicial decision, said:

> The Constitution of the United States is Federal. It is a league or treaty made by the individual States as one party, and all the States as another party. When two nations differ about the meaning of a clause, sentence, or word in a treaty neither has the exclusive right to decide. But if it cannot be thus accomplished each has a right to retain its own interpretation until a reference be had to the mediation of other nations, an arbitration, or the fate of war.

Such utterances culminated in the fatal message of President Buchanan to Congress, in December, 1860. While the guilty hand of rebellion was already striking at the life of the Republic, he said:

> Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw from the confederacy? If answered in the affirmative, it must be on the principle that the power has been given to Congress to declare and make war upon a State. After much reflection we have come to the conclusion no such power was delegated to Congress or to any other Department of the Federal Government.

Had such political dogmas obtained when Mr. Lincoln succeeded to the Presidency, Mr. Davis's request, while at the head of the southern confederacy, "to be let alone" would have been realized.

Against such deliverances, so enervating to the robustness and perpetuity of our peculiar, yet complete and indissoluble American Union, I array the safe and stately conclusions of Mr. Webster, when, in 1833, advocating the passage of the very law now designated for repeal, he said:

> The Constitution is not a league, confederacy, or compact, between the people of the several States in their sovereign capacities; but a government proper, founded on the adoption of the people, creating direct relations between itself and individuals.
>
> 2. No State authority has power to dissolve these relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.
>
> 3. That there is a supreme law, consisting of the Constitution of the United States and acts of Congress passed in pursuance thereof, and treaties; and that in cases not capable of assuming the character of a suit in law or equity, Congress must judge of, and finally interpret this supreme law, so often as it has occasion to pass acts of legislation; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court is the final interpreter.

These oracular declarations of the Marshfield Statesman have crystallized into the convictions and purposes of that historical political organization with which I rejoice to co-operate, and whose policy saved the Republic. They received a sacred baptism with the blood of patriots. They were the motto to as earnest devotion as "faith in the Cross."

Bearing to triumph their banners symbolizing such and kindred sentiments, five hundred thousand loyal American soldiers recently bit the dust. Pass the pending bill, and it will be a substantial surrender by a rescued nationality to that "State-rights" political heresy the world thought was destroyed in that heroic conflict.

Mr. RICHARDSON, of South Carolina. Before the gentleman from Pennsylvania takes his seat I desire to ask him a question. Does he know the fact that the prisoners taken out of the hands of Judge Kershaw have been turned loose and have never yet been tried; and further, that there are two other cases in South Carolina in which persons who had committed homicide, and as it is believed, murder, have been taken from the custody of the State authorities of South Caro-

lina, who were about to try them, and they have in each case been turned loose and are yet untried, walking free over the country, and one of them not only turned loose but appointed to Federal office?

Mr. WHITE. I suppose he was a good man and suitable for the appointment, or he would not have received it. My only reply is, I believe and have just defended the proposition, as a lawyer, that where a murder or crime has been committed by a Federal officer in the execution of his official duties, and the case removed to the United States court, the power exists in such court to try the accused, and if convicted, to punish him for that offense. It is in the power of the gentleman's State to follow up the prosecution in the United States courts and press the guilty to trial and punishment. If these United States officials are malefactors, the failure to punish is with the State prosecutors and not the law. I am not sure, however, the gentleman's State is always so prompt in prosecuting and trying those offenders against their laws who are not United States officers.

Letter from the Commissioner of Internal Revenue.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, June 3, 1879.

SIR: Replying to your verbal request I have the honor to state, that the records of this office show that since July 1, 1876, one hundred and nine officers and employés of the Government have been proceeded against in State courts for acts performed by them in the discharge of their duties under laws relating to internal revenue as follows:

Fifth district of North Carolina	13
Sixth district of North Carolina	21
District of South Carolina	14
Second district of Georgia	24
Third district of Georgia	6
District of Arkansas	6
Second district of Tennessee	14
Fifth district of Tennessee	11
Total	109

Reports of such proceedings instituted in State courts against officers and employés of the Government have not been rendered by all collectors. In several districts in the Southern States, in which such proceedings have been instituted, the collectors have furnished no reports on this subject, and I am informed by some of the collectors of the above-mentioned districts that their records of such cases are incomplete and that an examination of the records of the State courts would show a much larger number than is stated above.

Very respectfully,

H. C. ROGERS,
Acting Commissioner.

General HARRY WHITE,
House of Representatives.

Army Appropriation Bill.

SPEECH OF HON. WILLIAM WARD,

OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES,

Wednesday, June 11, 1879,

On the bill (H. R. No. 2175) making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes.

THE ISSUE FAIRLY MADE UP.

Mr. WARD. Mr. Chairman, now, for the first time in the course of this protracted discussion the issue is fairly made up. The Army appropriation bill and the legislative, executive, and judicial appropriation bill have both been vetoed by the President. They have come back to us in the House, and the constitutional requisite of two thirds of the members has failed to respond and enact them into laws the President's objections notwithstanding. They were disapproved by the Executive, not because he objected to any of the money items of appropriation therein contained, but because, as his messages inform us, there were ingrafted upon them as "riders" certain political measures that he could not sanction. These political measures are in no way essentials of the appropriation bills. Their most zealous and partisan advocates have not ventured to contend that the necessary appropriations of the Government could not be fully and effectually voted and administered in their absence. They are not money measures, but purely factional political legislation, and democratic majorities in the Senate and House tie them to the appropriation bills, sensible of the fact that in no other way could they ever become laws, and in the hope that the President when receiving them in this form will be forced to silence his objections in order to save the supplies necessary for governmental existence. The attempt has failed, and the President has expressed his disapproval.

The crisis has arrived, and what is now to be done? At first we heard dark threats from the other side of this Chamber that if the Executive dared to express his conscientious convictions in this manner, the democratic majority in Congress would punish him by refusing appropriations, and that the wheels of government in the departments covered by these two bills, should stop during the next fiscal year. It was even asserted and argued with appearance of sincerity and with great loudness of tone, that the Constitution and abundant precedents sustained this revolutionary course.

Let us briefly discuss the subject in this aspect.

THE CONSTITUTIONAL PROVISION.

Section 7 of article 1 of the Constitution of the United States provides:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it.

Thus, it is clear that the Executive approval is an essential of the law-making power. The Constitution gives him an equal voice with the House and Senate in the enactment. It intends that his conscience, his intelligence, his sense of right, justice, and care for the public welfare shall all be brought into requisition and appealed to before any proposed act of legislation can be consummated. In his sphere he is absolute—equal in his functions to either or both branches of the National Legislature. Where, then, can our democratic opponents find constitutional warrant to justify them in threatening or coercing the Executive in the exercise of a function which the Constitution itself clothes him with in the fullest and freest discretion. To state the proposition is to show its absurdity. But the long line of precedents accords with this view, and deprecates any attempt by the legislative branches to resort to extreme measures to force the will of the Executive.

ALEXANDER HAMILTON'S UTTERANCES.

In volume No. 13 of the Federalist, in the seventy-third article, Alexander Hamilton thus writes:

The propensity of the legislative department to intrude upon the rights and to absorb the powers of the other departments has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defense has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without the one or the other the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities or annihilated by a single vote. And in the one mode or the other the legislative and executive powers might speedily come to be blended in the same hands.

DOCTRINE OF BLACKSTONE'S COMMENTARIES.

Blackstone, in his Commentaries, volume 1, page 154, indorses the power of negativing legislative enactments vested in the king as "a most important, and, indeed, indispensable part of the royal prerogative to guard against the usurpations of legislative authority."

CHIEF-JUSTICE STORY'S VIEWS.

That eminent jurist, Chief-Justice Story, in his Commentaries on the Constitution, volume 1, page 614, collects and comments upon the views of other writers on the subject, and expresses his own, as follows:

In the next place, the power (the executive negative) is important as an additional security against the enactment of rash, immature, and improper laws. It establishes a salutary check upon the legislative body, calculated to preserve the community against the effects of faction, precipitancy, unconstitutional legislation, and temporary excitements, as well as political hostility.

These words were written by Judge Story in 1833, forty-six years ago. But they seem to bear the imprint of prophecy for the present, and revive with living emphasis the counsels of the good and wise, to guide and, let us hope, preserve in the crisis of to-day, when "faction, precipitancy, temporary excitements, and political hostility" rule the hour, and run riot over the peace and best interests of the country, as well as threaten the purity and freedom of our most cherished institutions.

CHANCELLOR KENT'S EXPRESSIONS.

Chancellor Kent, the ablest commentator on constitutional law America has produced, follows the same line of thought in this language:

This qualified negative of the President upon the formation of laws is, theoretically at least, some additional security against the passage of improper laws, through prejudice or want of due reflection; but it was principally intended to give to the President a constitutional weapon to defend the executive department, as well as the just balance of the Constitution against the usurpation of the legislative power.

To enact laws is a transcendent power; and if the body that possesses it be a full and equal representation of the people, there is danger of its pressing with destructive weight upon all the other parts of the machinery of the Government.

It has therefore been thought necessary by the most skillful and most experienced artists in the science of civil polity that strong barriers should be erected for the protection and security of the other necessary powers of the Government. Nothing has been deemed more fit and expedient for the purpose than the provision that the head of the executive department should be so constituted as to secure a requisite share of independence, and that he should have a negative upon the passing of laws; and that the judiciary power, resting on a still more permanent basis, should have the right of determining upon the validity of laws by the standard of the Constitution.—1 *Kent's Com.*, 240.

THE DEMOCRATIC THREAT.

Thus, by constitutional provision and uncontroverted precedent, the Executive stands intrenched. His refusal to concur is not an absolute defeat of the legislation, as was the *veto* of the English King in olden times, and of the Roman and French sovereigns. It is a qualified negative, and can be overcome by the vote of two-thirds of the legislative members, if after considering his objections they are so disposed. In the appropriation bills that form this contention the two-thirds cannot be obtained.

And, Mr. Chairman, what is the recourse proposed by the democratic majority? To say both to the President and to the non-concurring members of the Senate and House, "We will circumvent the

powers reposed in both of you by the Constitution and the precedents. Unless you surrender your convictions of right and duty, we will cripple the Government through all its channels of operation, and refuse the necessary supplies, unless they are coupled with political legislation which are foreign to the purposes of appropriation and obnoxious to the sentiments of the Executive and of the minority." This was the plain threat accompanying the first Army and legislative, executive, and judicial bills returned by the President without his approval; and those last introduced, one of which is now under discussion, are framed in the same spirit and designed to coerce by the same means.

THE DEMOCRATS FORCING THE REPEAL OF WISE LAWS.

Mr. Chairman, let us briefly consider the nature of the statutes that the democratic party are endeavoring to have repealed by threats and coercion against the will of the Executive and minority. Are they good or bad laws? The test oath for jurors is out of the question. A republican Senate in the last Congress removed this test and the bill laid on the Speaker's table of the House for weeks, in the control of the democratic majority at any moment they elected to call it up for action. Surely they are estopped on that branch of the contention. The democratic party is attempting to force the repeal—

First. Of all those portions of sections 2002 and 5528 of the Revised Statutes, which permit the use of the civil, military, and naval power of the United States, when necessity demands it, "to keep the peace at the polls."

The effect is palpable, to utterly destroy the right of the United States Government to use military force to keep the peace at the elections for members of Congress; and the right of the Government, by civil authority, to protect these elections from violence and fraud.

If the civil officer—be he United States marshal or supervisor, State governor or municipal sheriff, constable or police officer—finds his authority contemned and his process set at naught, the superior power that could command peace and order, and enforce them cannot be invoked, because clothed in the garb of a United States soldier or marine. But the polls must be turned over to the control of, and the rights of the honest voter trampled under foot by, mob violence. The power of the Government, ample for the protection of all its citizens in all their rights upon every other day of the year, must become paralytic in all its functions during the hours between the opening and the closing of the polls. This is the democratic panacea for insuring "free and fair elections." Have these statutes ever been executed to the extent of abuse? The President answers the question in his message returning the Army bill, and his assertions remain unchallenged to this hour. After tracing the course of legislation, he says:

From this brief review of the subject it sufficiently appears that, under existing laws, there can be no military interference with the elections. No case of such interference has, in fact, occurred since the passage of the act last referred to. No soldier of the United States has appeared under orders at any place of election in any State. No complaint even of the presence of United States troops has been made in any quarter. It may therefore be confidently stated that there is no necessity for the enactment of section 6 of the bill before me to prevent military interference with the elections. The laws already in force are all that is required for that end.

But that part of section 6 of this bill which is significant and vitally important is the clause which, if adopted, will deprive the civil authorities of the United States of all powers to keep the peace at the congressional elections. The congressional elections in every district, in a very important sense, are justly a matter of political interest and concern throughout the whole country. Each State, every political party, is entitled to the share of power which is conferred by the legal and constitutional suffrage. It is the right of every citizen possessing the qualifications prescribed by law to cast one unintimidated ballot, and to have his ballot honestly counted. So long as the exercise of this power and the enjoyment of this right are common and equal, practically as well as formally, submission to the results of the suffrage will be accorded loyally and cheerfully, and all the departments of Government will feel the true vigor of the popular will thus expressed.

THE SUPERVISORS AND MARSHALS.

In the legislative, executive, and judicial bill the provisions for insuring honest voting and a fair count at elections are repealed, and therein lies the contention between the democratic majority in Congress and the President and republican minority. Has this system been beneficial in its operation? A complete answer is found in democratic testimony, and I proceed no further than quote from the report of the distinguished leader of the democracy, at present a member of this House, [Hon. S. S. Cox, of New York.] That gentleman, in making the report from the select committee on alleged fraudulent registration and voting in New York, Philadelphia, Brooklyn, and Jersey City, (see Committee Reports No. 318, second session Forty-fourth Congress, page 4,) expresses his admiration of the system of Federal supervision of elections, in the following glowing words:

The committee would commend to other portions of the country and to other cities this remarkable system, developed through the agency of both local and Federal authorities acting in harmony for an honest purpose. In no portion of the world, and in no era of time, where there has been an expression of the popular will through the forms of law, has there been a more complete and thorough illustration of republican institutions. Whatever may have been the previous habit or conduct of elections in those cities, or howsoever they may conduct themselves in the future, this election of 1876 will stand as a monument of what good faith, honest endeavor, legal forms, and just authority may do for the protection of the electoral franchise.

The insincerity of the present attitude of the democracy is thus thoroughly exposed.

HASTENING TO THEIR POLITICAL SODOM AND GOMORRAH.

No, Mr. Chairman, these laws were enacted to protect right and prevent fraud. No honest voter fears the "Boys in Blue." His devotion in the past saved the Union, and his uniform to-day is a guarantee to the law-abiding citizen for peace and the protection of his rights. Repeal these laws, and the "murderers" of New York, the "plug-uglies" of Baltimore, and the "repeaters" of Philadelphia and Cincinnati will hold high carnival on election day. There "will be none to make them afraid," for they will laugh to scorn the puerile civil authority from which a democratic Congress has withdrawn the strong arm, and left it powerless to enforce its decrees. Fraud will stalk unchallenged in the large cities, and thence spread—a veritable eruption of crime—into the towns and villages, until all elections throughout the land become tainted and enveloped in these corrupting influences. Answer! You are striving in this House to thrust these repeals through by means so violent! Do you believe that the pure and honest sentiment of the country will rest under such a condition? I warn you "beware of the day" that you hasten the crisis, for in the certain failure of your machinations you will find your political Sodom and Gomorrah.

SOUTHERN MEN INSENSIBLE TO THEIR BEST INTERESTS.

What has the South to gain by joining in this crusade? I have heard the rumor in apparently reliable quarters, that with the test oath expunged southern men had no substantial interest left in the controversy; that they had no fear of the exercise of Federal authority, either in the form of keeping peace at the polls or through marshals and supervisors, but that in the struggle they followed the lead of their northern democratic allies, who insisted on the repeal of these laws also, and the extra session was precipitated in consequence. Why? Only that wholesome restraints against fraud and violence may be removed and that the large cities of the North—notably New York—should be in condition to return manufactured fraudulent majorities, of any required number, in 1880. If it be so that the democrats of the North are responsible for the present state of affairs, every candid man must admit that no party can survive on such an issue. American sentiment is overwhelmingly in favor of pure elections and fair play. Do not mistake! The mutterings that are heard on all sides, condemning the revolutionary action that provoked this extra session, with its enormous expense and its opened door for raids on the Treasury, agitations of finance, and disturbance and distrust in all business channels, are not the tocsin for the gathering of partisan clans. They are the warning tones of an outraged people, composed of all parties, betokening the gathering storm that will speedily overwhelm all who are engaged in this unholy scheme.

Men of the South, I ask you where will your northern democratic allies be when the storm breaks? Whatever may have been your inducement, you hold the controlling power in Congress and will be held responsible. You tried northern democrats once and they were found wanting. It will be so again. The loudest among them, who fanned your passions and lured you into rebellion against the Union, deserted you on the verge of your ruin, and those who remained true to your "lost cause" were swept by the tornado of loyal indignation into utter helplessness. "History will repeat itself" in disaster more dire in the second example than the first.

WHAT THE SOUTH OWES TO THE REPUBLICAN PARTY.

Mr. Chairman, it must be conceded that in the North there exists a sincere and well-grounded belief that fair, free, and pure elections can only be guaranteed by Federal supervision, especially in populous cities. Concede, if you please, that fair elections mean republican success. Should the South make issue with the republican party on the ground of honesty and purity? Shall it be forgotten that the republican party, in the zenith of its power, raised the South from the dust of defeat and rehabilitated its members into sovereign States; gave her the opportunity to obtain, as she has, control on this floor, from which her Representatives might have been excluded for years to come unnumbered.

Let it not be forgotten that the republican party, with liberal hand, assents to supplies for the preservation of health and the protection of commercial and other material interests of that section, that contributes a comparatively insignificant return to the national revenues. The mouth of the Mississippi absorbs millions from the Federal Treasury through the Eads jetties. In every river and harbor bill, the rivers and streams of the South command attention and receive lavish aid. With ample quarantine establishments in all the large cities of the North, maintained by the respective States, only a few weeks since a national quarantine bill was passed, with some hundreds of thousands of dollars to execute it, from which the South will derive almost exclusive benefit. A National Board of Health is erected by Congress, with liberal appropriation, to consider and, we hope, control the yellow fever—an epidemic almost peculiar to that section; and a bill is now pending before the Committee on Commerce to establish a marine hospital at Memphis. The rivers and coasts of the South are lighted and her postal service brought to the highest degree of efficiency out of the National Treasury, although the postal receipts from that section are far in deficiency. The republican party in the past has never put one obstacle in the way of the Southern States in regaining their equal position in the Union; and in the present has never denied, but cheerfully acceded every appropriation that would

ameliorate their condition, or enable them to cover their own inability to supply their wants.

There is not a southern man to day, who would not trust the republican party with the protection of his rights and property, and with the task of improving his State and spreading education and prosperity throughout its borders; and, if sincere, he will confess that the trusts would be faithfully and successfully executed. Surely, decent regard for the sentiments and honest belief of a section and a party that have evinced such magnanimity and liberality, should be the return. Can the South afford to enter into an alliance to outrage them?

THE POSITION AND MISSION OF THE REPUBLICAN PARTY.

Mr. Chairman, in this crisis the republican party presents a grand spectacle. True to its first utterances, there it stands "firm as the surge-repelling rock;" not a single article of faith departed from; not a jewel in the diadem of its consistency obscured; united and strong; all former divisions cemented; the President and party in happy accord; the people casting aside old allegiances and flocking to that standard under which alone they can trust for wise statesmanship and lasting progress, prosperity, and peace. That party found its highest position when, in the day of youth and weakness, the armor was buckled on for freedom and union; and through fire and blood the victory was won. But the second epoch opens with the promise of more glorious fruits, if such there can be; for now, in the struggle against factional agitation and unwise and revolutionary legislation, the republican party enters the contest; and, unfurling the banner of the Constitution and the law, battles for equal rights, an honest ballot, public faith fulfilled to all classes, and honesty between man and man.

This is the mission of the republican party; and the sky is already illuminated with the bow of promise of the second victory, for its principles are as immutable as God himself and as enduring as eternity.

Army Appropriation Bill.

SPEECH OF HON. THOS. M. BAYNE,

OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES,

Wednesday, June 11, 1879,

On the bill (H. R. No. 2175) making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes.

Mr. BAYNE. Mr. Speaker, it is with much reluctance that I feel it to be my duty to differ with so many of my party friends as to the propriety of voting for the bill making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes. How nobly, how patriotically my republican colleagues have stood as one man against the threatened destruction of the national authority I know, and I regard it as the most admirable feature of the epoch in our history which will mark the triumph of national unity or national ruin in the impending struggle so ruthlessly precipitated by the democratic majority.

Three similar epochs, with the same cause of contention running through them, have preceded the present one. The first of these began with the formation of the Constitution and continued until December 1791, when the first ten amendments to the Constitution were ratified by the requisite number of States. The struggle then was, on the part of the federalists and a considerable number of democrats of great ability, to implant in the Constitution all the authority and powers essential to the sovereignty and self-preservation of the National Government. The opposing party resisted, predicting the destruction of the liberties and rights of the people as it is doing to-day, and insisted upon the lodgment of governmental sovereignty and the principles of self-preservation in the States. The friends of national supremacy were victorious, and our great Republic is the monument of their profound wisdom and sublime faith.

The second epoch covers that period of President Jackson's administration when South Carolina attempted to nullify the laws of the United States and to justify herself by the resurrection of the theory of State sovereignty. Her champion advocate, John C. Calhoun, claimed that the Constitution was not a Constitution at all, but a constitutional compact, and that any State having "grievances to redress," as it is put now, could withdraw from the Union, and the National Government was powerless to prevent it. Jackson, however, was a national democrat like Madison, and he crushed out nullification and coerced South Carolina and her people into obedience to the Constitution and laws of the United States. And thus national sovereignty had its second triumph.

The third epoch had its beginning in the halls of Congress, where for a series of years prior to 1861, the Representatives and Senators from the slave States sedulously inculcated the doctrine that "to redress grievances"—the grievance then being their inability to extend human slavery into the Territories—their States had the right to secede from the Union. So in 1861, with South Carolina in the lead, most of the slave States seceded, and James Buchanan, who was as unlike Jackson as the democrats of to-day are unlike Madison and Jefferson, had given them hope of immunity from interference by affirming that the National Government had no authority to coerce them into subjection to the Constitution and laws.

President Lincoln and the republican party differed from Buchanan and the large majority of the democratic party who thought as he did, and after four years of war, and the expenditure of much precious blood and vast sums of money, the theory of national sovereignty again won the victory. Then it was we hoped and believed that this vexed question of State rights was completely and forever out of the pale of political controversy. How grievously we erred in that judgment is manifest now. For the very outgrowths of this epoch, the fruits of the nation's victory, which were incorporated into amendments to the Constitution and into laws, are "grievances to be redressed," and the democratic party "does not intend to stop until it has stricken the last vestige of these war measures from the statute-book."

Thus the fourth epoch has begun. Each of its predecessors had its crisis. The crisis of the present one is to come. I will only say that if the tide of events should turn in the direction in which the democratic party seeks to divert it the Union will soon be held together by but a rope of sand. Thirty-eight sovereign States, with their diversity of climate, variety of temperament, and differences of civilization, under the domination of a party whose chief characteristic is to undo what the progressive part of the people has done, cannot in the nature of things long hold together.

One of the reasons why I vote against this bill is because the sixth section of it embraces decided tendencies toward the destruction of the national supremacy. It is right in line, though not so overt a manifestation of the purpose, with the nullification of the laws of the United States by South Carolina in 1832 and the secession movement of 1861. The section reads:

SEC. 6. That no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State.

This section, in my opinion, is obnoxious to at least three objections of great pith and moment:

First. It undertakes to fetter in an insidious, indirect manner the constitutional power of the President as Commander-in-Chief of the Army.

Second. It attempts by indirection to nullify all the laws of the United States which look to the effectual suppression of lawlessness at the national elections unless the United States authorities, without the aid of military force, are equal to the emergency.

Third. It involves the implication that the United States has a "peace" which it may not employ the military, in any event, to keep at the national elections.

Postulating, as the objections do, the right of the National Government to regulate and protect its elections, which I undertook to show in a speech delivered the 22d of April last, on the legislative, executive, and judicial appropriation bill, I will go at once to the points bearing upon the present inquiry.

That portion of the first paragraph of section 2, article 2, of the Constitution, which reads "The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States," confers upon the President the command of the Army and Navy, and is a provision of the Constitution which executes itself, if any provision of that instrument does. No act of Congress, I think, can impair this power.

By paragraph 15 of section 8, article 1, Congress has power—

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

And by paragraph 18 of the same section—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

It was provided by the act of Congress of March 3, 1807—

That in all cases of insurrection or obstruction to the laws, either of the United States or of any individual State or Territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect.

This early and unquestioned interpretation of paragraph 15, section 8, article 1 of the Constitution removes the technical objection that might have been made against employing the land and naval forces of the United States for the same purposes and to the same ends that the militia could be employed, and it is therefore clear that it is competent for Congress to empower the President to use the land and naval forces of the United States "to execute the laws of the Union."

In section 3, article 2, which prescribes the powers and duties of the President, it is provided "he shall take care that the laws be faithfully executed." And by the last paragraph of section 1, article 2, he is required to take the following oath or affirmation before entering on the execution of his office:

I do solemnly swear (or affirm) that I will faithfully execute the office of Presi-

dent of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States.

Now, is it not clear that if there are laws of the United States which require that the peace be kept at the polls, and that in employing a portion of the Army to do such service it is used as a police force, section 6 fetters the power of the President as Commander-in-Chief of the Army in his civil capacity to use any portion of the Army for that purpose? Is it not obvious that he cannot, if there be such laws and their enforcement be such service—the consideration of which questions I will come to presently—that he cannot take care that they be faithfully executed in the event of the emergency requiring the use of a portion of the Army?

Is it not self-evident, too, coming to the second objection I have stated, that this section, if it becomes a law, will nullify all the laws of the United States which look to the effectual suppression of lawlessness, or, in other words, keeping the peace, at the national elections, unless the United States authorities without the aid of military force are equal to the emergency? To ask these questions in the presence of the provisions of the Constitution and the laws is to answer them. It will not do to say that this section 6 only denies an appropriation for the subsistence, equipment, transportation, and compensation of such portion of the Army as may be used as a police force to keep the peace at the polls, and that nevertheless, if it becomes necessary, a portion of the Army may be so used. If the President approves that section, as a part of the law-making power he consents in good faith to its spirit as well as its letter, and his conscience and his dignity would alike revolt at any evasions of it. Mincing words or providing loopholes of escape will not wrest this section from its logical environment.

If there be laws of the United States which empower the President or his subordinate magistrates to keep the peace at the polls, and if using a portion of the Army to do that service be police duty, section 6 of this bill will, and is intended to, fetter the President in the performance of his duties in that regard, and will and is intended to nullify, *pro re nata*, the laws which declare such duties.

This section of the bill admits that the United States has a "peace," though numerous gentlemen belonging to the majority have argued that the United States has no "peace," meaning thereby the word in its technical sense, I suppose.

The preamble to the Constitution of the United States declares that—

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

To insure domestic tranquillity among the people of the United States is manifestly a fundamental object of the Constitution. Every provision of the Constitution points to the consummation of the objects enumerated in the preamble as certainly as the needle points to the poles; and Congress has power to make all laws which are necessary and proper to effect all these objects.

Bouvier's Law Dictionary defines the word "peace" as follows:

PEACE. The tranquillity enjoyed by a political society, internally, by the good order which reigns among its members, and externally, by the good understanding it has with all other nations. Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose and security as opposed to one of violence or warfare, but likewise a state of public order and decorum.

Now, I call attention to the same authority, Bouvier's Law Dictionary, for a definition of the term "police:"

POLICE. That species of superintendence by magistrates which has principally for its object the maintenance of public tranquillity among the citizens. The officers who are appointed for this purpose are also called the police.

2. The word police has three significations, namely:

1. The first relates to the measures which are adopted to keep order, the laws and ordinances on cleanliness, health, the markets, &c. 2. The second has for its object to procure to the authorities the means of detecting even the smallest attempts to commit crime, in order that the guilty may be arrested before their plans are carried into execution, and delivered over to the justice of the country. 3. The third comprehends the laws, ordinances, and other measures which require the citizens to exercise their rights in a particular form.

3. Police has also been divided into administrative police, which has for its object to maintain constantly public order in every part of the general administration; and into judiciary police, which is intended principally to prevent crimes by punishing the criminals. Its object is to punish crimes which the administrative police has not been able to prevent.

Now the adaptation of the generic definition of police—that of maintaining public tranquillity by the superintendence of magistrates—to that fundamental object of the Constitution stated in the preamble—that of insuring domestic tranquillity—is perfect. Add the definition of peace, which is the most comprehensive word in the vocabulary applicable to the science of government, either in its legal sense generically or technically, and no room is left, either within or without the circle of governmental duties and objects thus brought together, to doubt that the United States has a "peace," and that the employment of force by it to preserve that peace is employing such force as a police. I care not whether it be a marshal and his deputies, a marshal and a *posse*, or a marshal and a portion of the land or naval forces of the United States, unless a State of war exists, it is a police force. It is under the command and subordinated to the purposes of the civil authorities. A portion of the Army thus employed is not operating under martial law, but under the civil law. It is but an instrument of the civil law, like the *posse comitatus* or like the police force of a city, to accomplish the identical ends for which they may be used, and the co-operation of all those forces in the performance of but one duty, would be not only a most natural, but also a most likely and regular transaction.

In this connection the first clause of the third definition of police, as given by Bouvier, significantly points to the conclusion I have come to. The numerous provisions of law relating to the conduct of elections are intended to prevent the perpetration of frauds on the ballot-box and the operations of combinations of armed men at the polls. The function of the marshal in such cases falls within the definition of administrative police so manifestly that it will be difficult, it seems to me, especially in the absence of all legal definitions which fit at all, excepting those growing out of the comprehensive words police and peace, to explain away the force and effect of these words in the sixth section of this bill. A wave of the hand will not do it. Rhetoric may obscure it, but the logical sequence will out.

I will only follow this line of inquiry one step further. I call the attention of the gentlemen who think the United States has no "peace" to the provisions of an act of Congress approved the 14th of July, 1798. The first section reads as follows:

Be it enacted, &c., That if any person or persons shall unlawfully combine or conspire together with intent to oppose any measure or measures of the Government of the United States which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the Government of the United States from undertaking, performing, or executing his trust or duty; and if any person or persons with intent as aforesaid shall counsel, advise, or attempt to procure any insurrection, riot, unlawful assembly, or combination whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor and on conviction before any court of the United States having jurisdiction thereof shall be punished by a fine not exceeding $5,000 and by imprisonment during a term not less than six months nor exceeding five years; and further at the discretion of the court may be holden to find sureties for his good behavior in such sum and for such time as the said court may direct.

The second section of this act defines the offense of libeling the Government of the United States, either House of Congress, or the President, for the purpose of exciting against them or either of them the hatred of the good people of the United States, or to stir up sedition or to excite unlawful combinations to resist the laws of the United States or any act of the President done in pursuance of such laws, and prescribes fine and imprisonment.

The fourth section permits the truth to be given in evidence on the trial of such libel, and the fifth and last section limits the continuance of the statute to the 3d day of March, 1801.

This old act, valuable only now as a criterion of the interpretation of constitutional powers by the fathers, emphasizes the propositions I have been contending for. It adopted the common-law classification of offenses against the public peace, and it gave to the judges of the United States courts authority to hold under bonds those whose behavior threatened public disturbances.

I ought not to have said that this old act was only valuable as an interpreter of constitutional powers. It admonishes us that the fathers thought that the public peace was imperiled by libeling the Government, the Houses of Congress, or the President; that such conduct excited the hatred of the people of their Government and its officers, stirred up sedition, and encouraged unlawful combinations to resist the laws of the United States. History is full of prophecy, because it is full of repetitions. How well that old act describes the situation to-day! All sorts of opprobrious epithets are applied to the President. Even in the halls of Congress allusions to him pass unchallenged which would meet with quick resentment in the ordinary relations of society. In the halls of Congress, too, such laws of the United States as are distasteful in certain quarters are denounced as unconstitutional; and what can be expected but sedition and want of all confidence in the Government, and where such laws stand in the way of men who so regard them, what is to be looked for but combinations to thwart them? Let the bands of white-leaguers, white-liners, and other combinations, which render fair and free elections in most of the Southern States impossible, answer.

I have argued thus at length that the United States has a "peace," and that the keeping of it involves necessarily the employment of a police, not because I have any doubt whatever on these subjects, but because I want to show, if I can, that the Government of the United States has firmly fixed in it these great elements of nationality, these essential faculties of a nation. It was not necessary at all in order to show that the United States has a "peace," for as long ago as February 28, 1795, when the Constitution was fresh from the hands of its framers, and when some of them were members of Congress, an act was passed, which is still the law of the land, which takes the proposition entirely out of the category of disputable questions.

The section of the act which is explicit and to the point is numbered 788 in the Revised Statutes, and is as follows:

That the marshals of the several districts, and their deputies, shall have the same powers in executing the laws of the United States as sheriffs and their deputies in the several States have by law in executing the laws of the respective States.

How thoroughly this act confers upon United States marshals the power to preserve the peace, as well as the multifarious kinds of offenses that are regarded by the law as a breach of it, are alike shown by the duties of the sheriff as defined by Bouvier, and which doubtless

pertain substantially to that officer in all the States of the Union. I take the second definition from Bouvier's Law Dictionary:

The general duties of the sheriff are to keep the peace within the county; he may apprehend and commit to prison all persons who break the peace, or attempt to break it, and bind any one in a recognizance to keep the peace. He is required, *ex officio*, to pursue and take all traitors, murderers, felons, and rioters. He has the keeping of the county jail, and he is bound to defend it against all attacks. He may command the *posse comitatus*.

I cannot add to the force of the conclusion which comes from the juxtaposition of the act of Congress of 1795 with the description of the duties of a sheriff, except to say that the military are as much bound to heed his summons when he invokes the power of the country as are civilians. It will strike every man whose head is not turned by a wicked clamor against the laws of the United States that on election day above all days the citizen should feel secure against violence. Yet the purpose of the political section of this bill is to disarm the national authorities on that day, though they should be armed on all others. It is not surprising, however, that that party which denounces these laws as unconstitutional should invite their violation and seek to cripple the power to execute them. But what will be thought of the good faith, the sincerity, the honesty of men who insist that these laws are unconstitutional and at the same time have never once taken them into a court for a decision? Many cases have been tried under them and no lack of opportunity can be pleaded. When portions of the Army were used under an act of Congress to aid the United States marshals to arrest and return to their chains poor fugitive slaves who were seeking their liberty it was all right to use a portion of the Army. Brave and good men, however, who thought that an unconstitutional use of the Army, took cases to the Supreme Court without delay; and when that tribunal affirmed the constitutionality of the act they acquiesced in the decision.

Let no man say or think that the republican party is simply in favor of troops at the polls. I do not know and I have never heard of a republican who wants troops at the polls. The republican party, while in a large majority in Congress, passed most stringent and sweeping measures against interference by any military, naval, or civil officer with elections. The following sections of the Revised Statutes clearly indicate the attitude of the republican party on this question:

SEC. 5528. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control, any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States or to keep the peace at the polls, shall be fined not more than $5,000, and suffer imprisonment at hard labor not less than three months nor more than five years.

SEC. 5529. Every officer or other person in the military or naval service who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State, shall be fined not more than $5,000, and imprisoned at hard labor not more than five years.

SEC. 5531. Every officer or other person in the military or naval service who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulation for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section 5529.

Section 5532 disqualifies any person convicted under the foregoing section from holding any office of honor, profit, or trust under the United States.

There are various other sections of similar import, and there is not a phase of improper interference by any civil, military, or naval officer or other person in the service of the United States with the right of any legal voter which is not covered by these laws. Does any one suppose that if there had been any case of interference at all the officer—civil, military, or naval, or other person in the service of the United States—would have escaped prosecution? With ku-klux, white-liners, repeaters, ballot-box stuffers, all of the democratic faith and all at the polls on election day, and ardent democrats of more respectability, but all anxious for a case in order if possible to make these laws odious, how eagerly the unfortunate officer or other person would have been brought to the bar of justice and public opinion! No single case has arisen. It shows the arrant hypocrisy, the downright deceit of the democratic leaders when they charge that the laws of the United States regulating elections interfere with the rights and liberties of the people. It is wholly the other way. These laws protect and assure the rights and liberties of the people, and that really is where the shoe pinches the democratic foot.

The National Government has direct relations with the citizens of the United States. The primary allegiance of the citizens is due to it. It is bound to protect them in the enjoyment of their rights. It was intended to secure the blessings of liberty to all the people. It was intended to establish justice, to insure domestic tranquillity, to promote the general welfare, and to provide for the common defense. The skeleton of a government stripped of powers and bereft of the confidence and love of the people cannot perform duties so varied and important, nor can it endure. The constant drop of water wears away the rock. State jealousy of national power must die out. The supremacy of the Constitution of the United States and of the laws made in pursuance of it must be cordially recognized. A recognition of such supremacy extorted by special pleading or dictated by selfish hopes is contemptible. The Government of the United States must be placed and kept in the hands of those who are its friends, who take pride in its power and stability, and who will vigilantly guard and preserve all its attributes.

What is the outlook from the present stand-point? This extra session of Congress was made necessary because the democratic majority in the last Congress refused to make appropriations for the legislative, executive, and judicial departments of the Government unless twelve sections of the law regulating national elections were repealed, and three others so amended as to destroy their efficacy. Then a rider was tacked to the Army appropriation bill which took away the power of the civil as well as the military authority to enforce these laws in just such emergencies as they were intended to provide against.

At this extra session the contest was renewed, and for three months the country has been kept in a state of perturbation and alarm, not knowing what a day might bring forth.

Experiencing the restraints and occasionally the penalties which the United States courts enforced for violation of the revenue laws and the laws regulating elections, the democratic majority proposes and does its best to pass a bill which repeals and impairs together a large part of the judiciary act of 1789 and its supplements, which give to the courts of the United States jurisdiction and enable them to protect the officers of the Government in the performance of their duties, and to save them from the malevolence of the criminals and their friends by having such cases as were brought against them from that motive transferred from the State to the United States courts. This old law was a menace to the rights and liberties of the citizens, according to the democratic saying. It does enable the United States courts to curb the liberty to manufacture whisky without paying the Government tax, and it does enable the United States courts to curb the liberty, to a very limited extent however, of repeaters and ballot-box stuffers and rifle clubs to carry on their enterprises with absolute impunity.

Another old law of the United States provided that jurors for the United States courts should be selected according to the regulations for selecting jurors which obtained in the States. No complaint had ever been made against this law until it was found that violators of the revenue laws and offenders against the laws regulating national elections were sometimes—sometimes I say—convicted. Then all at once it was discovered that the United States juries were packed, and a bill was introduced and has passed both Houses of Congress within a few days, which substantially provides that two persons shall select United States jurors, one of whom shall be a republican and the other a democrat. It will convert juries which have hitherto been free from partisan manipulation into political machines. And it is not at all likely that any one will be convicted under the national election laws when one-half the jury believes them to be unconstitutional and an interference with the rights and liberties of the people.

If the democratic majority keeps on in the course it is pursuing, the people will have such liberty as they never enjoyed before. It will be natural liberty, as the law-books call it, unrestrained by any laws excepting those of nature. It will not be desirable for the weak, but excellent for the strong.

The rights and liberties of the people under laws which they themselves make; the rights and liberties of the people protected and guaranteed by laws, which our system of government enables the people, who are the supreme authority, to abolish or modify at their pleasure—these are the propositions which the republican minority insists upon. The republican minority has resisted as best it could all these schemes of the democratic majority, whose ultimate result, if permitted by the people to run their course, will be to denationalize the United States and leave in its stead a lot of little nations, as jealous of one another as many of them now are of the great nation of which they are but parts.

Army Appropriation Bill.

SPEECH OF HON. HIESTER CLYMER,

OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES,

Wednesday, June 11, 1879,

On the bill (H. R. No. 2175) making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes.

Mr. CLYMER. Mr. Chairman, it is a source of gratification to me, and doubtless to every member of the committee, that the controversy which has chiefly occupied our attention and that of the country since we met in extra session is drawing to a close. The bill which has occasioned it was introduced from motives of highest patriotism and deepest regard for the liberties of the people and the perpetuity of our republican form of Government.

The existence of the right or the claim of right on the part of the Executive to have troops or armed men at any place where any general or special election is held in any State, under the pretense of

keeping the peace at the polls, is a menace to the liberties of the people, a perpetual threat to the freedom of the ballot—that freedom upon which depends the stability of our institutions. It is a subversion of the civil by the military power, so gravely reprobated and vigorously denounced by those who founded the Government. It is a revival in its worst and most odious form of the old federal doctrine of a strong consolidated government. It is a resurrection of the ideas upon which the alien and sedition laws were enacted and enforced, of ideas which greatly flourished under the elder Adams, causing his administration to be a failure and its memory to be held in condemnation.

Entertaining these views, the majority of this committee would have been derelict to duty, recreant to the wishes of the great majority of the people of this land, whose immediate representatives they are, had they not attempted by every lawful means to wipe this provision of the law of 1865 from off the statute-book; and in so doing they are not to be charged with prejudice against or being opposed to the existence of the Army because they attached the repealing clause to the Army appropriation bill. It is true that, as a party, we are opposed to a large standing army; with our fathers we believe that a well-regulated militia is necessary to the security of a free State, that the Army proper should not be larger than is necessary to form a nucleus around which the militia, in time of need in the future, may gather and bring us victory, as it has never failed to do in all our past wars.

But thus believing, we are not unmindful of its services and glories, of its devotion and valor. The names of its heroes and leaders are imperishably engraved on our hearts, and so interwoven with the most brilliant events in our history that we may never forget the services it has rendered or the gratitude which is its due; and if, sir, a thought of complaint or dislike against it has ever entered the mind or heart of any American, it is because against its will, at the bidding of political necessity and party exigency, it has been used to intimidate the citizen, to uproot the foundations of States, to subvert the law, to ignore the voice of the majority of the people, and to be a very terror and scourge in the hands of the unscrupulous possessor of power.

It is from this distasteful and unworthy duty we would rescue it. We would not have it either the servant of the party in power to do its bidding, or as our master to fasten on our limbs fetters forged by partisan ingenuity for partisan perpetuity. We would, and will when we come to our own, so legislate that it shall be restored to the respect, love, and consideration in which it was always held until sectionalism and hate became potent factors in this Government. We will strip it of degrading duties which properly belong to the roundsman and constable, to the State and not to the Federal Government. We will use it to repel armed enemies, to protect the States against invasion and domestic violence, to vindicate the power and uphold the honor of the Government on the battle-fields of the Republic; not, sir, as a police force at the polls, not as an instrument of intimidation, not as a shield for the cowardly designs of politicians, not as a *posse comitatus* to execute unconstitutional and illegal mandates of chief supervisors and marshals. Oh, no, sir; we will use it for the higher, nobler, and constitutional purposes I have named, and then and not until then will it be restored to the full confidence and support of all the people and again become as of old their pride and glory.

It is a subject full of interest to trace the legislative steps by which the Army has been subjected to the base uses which now degrade it and by which the people have been intimidated and their wills subverted. Early in our history—in 1792, Washington being President—the first act relating to the subject was passed. Within three years thereafter that act was repealed by the act of February 28, 1795, which substantially re-enacted its provisions, which are as follows:

Be it enacted, &c., That whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the State or States most convenient to the place of danger or scene of action as he may judge necessary to repel such invasion, and to issue his orders for that purpose to such officer or officers of the militia as he shall think proper. And in case of an insurrection in any State against the Government thereof it shall be lawful for the President of the United States, on application of the Legislature of such State or of the executive, (when the Legislature cannot be convened,) to call forth such number of the militia of any other State or States as may be applied for and as he may judge sufficient to suppress such insurrection.

SEC. 2. *And be it further enacted*, That whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the President of the United States to call forth the militia of such State, or of any other State or States, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress.

SEC. 9. *And be it further enacted*, That the marshals of the several districts and their deputies shall have the same powers in executing the laws of the United as sheriffs and their deputies in the several States have, by law, in executing the laws of the respective States.

By the first section of the act it will be observed that the power of the President to call forth the militia was limited to two contingencies: first, invasion or immediate danger of invasion from any foreign nation or Indian tribe; second, in case of an insurrection in a State *against the government thereof*, on the call of the Legislature thereof, or the executive when the Legislature cannot be convened.

By the second section, whenever the laws of the United States shall be obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by power vested in the marshals by the act, the President might call forth the militia of such State or of any other State as may be necessary to suppress such combination, and cause the laws to be duly executed—*but mark!* "the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress," *and not longer*.

By the ninth section the marshals of the several districts and their deputies shall have the same power in executing the laws of the United States as sheriffs and their deputies of the several States have by law in executing the laws of their respective States.

Observe, sir, how in this earliest enactment the use of the militia by the Executive is restricted and guarded; how evidently jealous the legislative power was of the executive.

Only in case of insurrection against the government of a State, and then only on application of its Legislature, or its executive when the Legislature cannot be convened.

Only in case of combination to obstruct the laws of the United States too powerful to be suppressed by the ordinary course of judicial proceedings or the marshals of the United States.

And again, observe the watchful vigilance which enacts that the use of the militia may only be continued for thirty days after the next meeting of Congress.

Those who fought the revolutionary war and framed the Constitution were largely represented in the Congress which enacted this fundamental law as to the use of the militia (army) by the Executive; they restricted it to certain defined, specific exigencies, and then only on terms and conditions, chief among which was that he could only use it for thirty days after they next met, thereby clearly asserting their right and intention to resume the control and direction of all military movements and affairs. They would trust the sword to no President, or other hand, save for a brief and limited period. They clearly understood their high constitutional prerogative, and in their earliest enactments they fulfilled to the letter their constitutional obligation "to provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion." Beyond these objects they well knew they had no power themselves, nor could they confer it on any one else.

In 1807 the following act was passed:

That in all cases of insurrection or obstruction to the laws, either of the United States or of any individual State or Territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect.

The act simply authorizes the President to use the land and naval forces in all cases where by the act of 1795 he might use the militia.

The law thus remained for more than fifty years, during the administrations of Madison, Monroe, John Quincy Adams, Jackson, Van Buren, Harrison, Taylor, Fillmore, Pierce, and Buchanan; and yet during all these years, under these statesmen and heroes, who has heard that an attempt was ever made to use the land and naval forces of the Government "to keep the peace at the polls," or, in other words, to use the Army to control elections in the interest of any man or party? Parties were formed and parties died; great leaders appeared and disappeared; there were wars external and internal; there were great political and financial convulsions; our boundaries were extended to the Gulf and to the Pacific, and there was wonderful national growth and material development in these fifty years; but in no one of them, at no time, at no place was it ever attempted to tamper with the freedom of the ballot by the use or presence of the Army at elections. Under all changes, in peace and war, under different leaders, and under the ascendency of different parties, there was one thing untouched, unchanged, and sacred, so held by all men of all parties—the freedom of the ballot, the very corner-stone of our edifice. He who would have attempted to disturb it would have been denounced as "*hostis humani generis*."

In 1860–'61 we fell upon evil times. The country was convulsed by civil war; giants were gathering in their strength to battle for nationality and political existence; the very foundations of society were broken up; men on each side the line went to their tents instead of their homes; the signs and sounds of the approaching storm were seen and heard everywhere, and it was the duty of those in power to prepare for it. It was under these circumstances the following law was passed in July, 1861:

SEC. 5298. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

However justifiable, in view of all the facts, it may have been to have passed this law, yet in its execution it was the pretext and shield for wrong, outrage, and oppression. Under it, and the suspension of the *habeas corpus* act, men and women were seized and cast into prison without information or trial. Under it State Legislatures were disbanded and the members incarcerated in the fortresses

of the United States. Under it, in many if not all the States not in rebellion, elections became a farce and the will of the people was ignored. Under it the laws were set aside and the ministers thereof held in contempt and derision. Under it the "Government," so called, in other terms the Administration, for the purpose of self preservation and perpetuation, decided, by the presence and active interference of troops, the election of governors, Legislatures, and members of Congress. The voice of the people everywhere was stifled, and at the dictation of military satraps men were placed in the highest executive and representative positions against their will.

The whole North was one vast camp, in which the laws were silent and where the will of the Commander-in-Chief was omnipotent. It is true that the forms of representative government were left to us, but the will of the people was so bowed down and crushed by the overshadowing presence of military power that scarcely anywhere in all the land could there be, or was there, any full, fair, free, unfettered, and unbiased expression of opinion at the polls. Others from my own State on this floor will not fail to remember with me the condition of affairs existing there at the gubernatorial election in 1863 and the presidential election the year following. Soldiers were used to influence, intimidate, and overawe, not only by their presence at the polls, but also at the primary assemblages of the people held under highest constitutional right to peaceably assemble.

A species of terrorism prevailed in nearly every community. Under the secret suggestions of cowardly partisans the purest and best, in many instances, were subjected to indignities for which there could be no reparation, to suspicions unfounded, and to wrongs without remedy. By the use of soldiers for the purpose of oppression and intimidation at the hustings and at the polls, elections became a farce, the ballot-box a cheat, and the result a crime. As in my State, so in most others of the North during the existence of the civil war. The mailed hand of the Administration grasped the throat of the people everywhere at the polls; the soldiers were used at all places and at all times to keep the people in subjection and to maintain the political supremacy of the Administration.

Of the condition of affairs in my own State from 1861 until 1865 I can speak from personal knowledge. To show the condition of affairs in other States, I might quote at length from speeches made by gentlemen representing them in this body and in the Senate.

It is quite true that the interference of troops at the polls during the period of the war was not pretended to be claimed as anything save a belligerent right growing out of the necessity of the times, yet it was exercised generally and so outrageously that the whole subject was carefully examined by a republican Congress in 1865; and on the 12th of February in that year Mr. Senator Howard, of Michigan, made an elaborate report thereon, (Report No. 14, Thirty-eighth Congress, first session,) in which it is said:

> That elections should be free from all violence and intimidation, is an axiom of free government accepted by all, and so evident that it need not be discussed. Violence and threats of violence, and all disturbance, actual or threatened, calculated to keep the legal voter from the polls or to constrain his free will and choice in exercising his right, are plainly incompatible with the principles on which our governments, whether State or Federal, rest.

But the report defends the right and duty to interfere at elections during a state of war, saying:

> This right is in the primary class of belligerent rights, pertaining to every independent nation. * * * It is plainly in its essence a military power—a belligerent right; as plainly such as the right of capture by sea, which has recently received the solemn sanction of the Supreme Court, in a judgment eminent for the power and clearness of its analysis, the profoundness of its learning, and the unanswerable character of its logic.
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> It is the inalienable duty of self-defense.
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> That this inherent right of war may be abused, as it possibly may have been occasionally during the present struggle, is certainly no reason for denying its existence, or, if it exist, for stripping our commanders of it by legislation.

The report sets forth at length the operations of the military at the polls in Missouri, Kentucky, Maryland, and Delaware during the years 1861, 1862, and 1863. In these States, which had never been out of the Union, the military authorities claimed not only the power to fix the qualifications of electors at State and congressional elections, but also the qualifications of the candidates for office, and in at least one instance the military commander enunciated the platform upon which the electors and candidates should stand.

During this same period, in 1864, seven thousand United States troops taken from the field were gathered in the harbor of New York, under General Butler, of Massachusetts, to control the elections in that city; and it was due alone to the firmness and prudence of Governor Seymour that the threatened outrage was not consummated.

Orders were issued by the commander of the Department of the Susquehanna to all military officials "to guard well the integrity of the ballot-box;" and the commander of the northern department, with headquarters at Cincinnati, issued similar orders. Thus it was, as I have heretofore said, the whole North was one vast camp, and that at the presidential election in 1864 the military were everywhere present at the polls, by general order, to control and intimidate the electors and influence the great result.

It is useless to discuss at this day whether this condition of affairs was to be justified even under the assumed "war power of the Government;" it is not claimed nor could it be justified under any other pretext.

The Supreme Court has solemnly decided in the Milligan case:

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the Government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

It was this claim of right on the part of the Government and the mode of its exercise, as I have heretofore shown, which induced Congress on the 25th of February, 1865, to pass the following restraining and prohibitory act:

> *Be it enacted, &c.*, That it shall not be lawful for any military or naval officer of the United States, or other person engaged in the civil, military, or naval service of the United States, to order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State of the United States of America, unless it shall be necessary to repel the armed enemies of the United States or to keep the peace at the polls. And that it shall not be lawful for any officer of the Army or Navy of the United States to prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State of the United States of America, or in any manner to interfere with the freedom of any election in any State, or with the free right of suffrage in any State of the United States. Any officer of the Army or Navy of the United States, or other person engaged in the civil, military, or naval service of the United States, who violates this section of this act shall, for every such offense, be liable to indictment as for a misdemeanor, in any court of the United States having jurisdiction to hear, try, and determine cases of misdemeanor, and on conviction thereof shall pay a fine not exceeding $5,000, and suffer imprisonment in the penitentiary not less than three months nor more than five years, at the discretion of the court trying the same; and any person convicted as aforesaid shall, moreover, be disqualified from holding any office of profit or trust under the Government of the United States: *Provided*, That nothing herein contained shall be so construed as to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he shall offer to vote.
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> SEC. 2. *And be it further enacted*, That any officer or person in the military or naval service of the United States, who shall order or advise, or who shall directly or indirectly, by force, threat, menace, intimidation, or otherwise, prevent, or attempt to prevent, any qualified voter of any State of the United States of America from freely exercising the right of suffrage at any general or special election in any State of the United States, or who shall in like manner compel, or attempt to compel, any officer of election in any such State to receive a vote from a person not legally qualified to vote, or who shall impose or attempt to impose any rules or regulations for conducting such election different from those prescribed by law, or interfere in any manner with any officer of said election in the discharge of his duties, shall for any such offense be liable to indictment as for a misdemeanor in any court of the United States having jurisdiction to hear, try, and determine cases of misdemeanor, and on conviction thereof shall pay a fine of not exceeding $5,000 and suffer imprisonment in the penitentiary not exceeding five years, at the discretion of the court trying the same, and any person convicted as aforesaid shall moreover be disqualified from holding any office of honor, profit, or trust under the Government of the United States.

The act itself sets forth fully the abuses and practices it was designed to remedy. Theretofore, since 1861 up to the date of the passage of the act of 1865, there had been no limit to the claim of right to use the land and naval forces, to fix the qualifications of voters, to interfere with the freedom of elections in the States and the right of suffrage by force, threat, menace, and intimidation, and to impose rules and regulations for conducting elections different from those prescribed by the laws of the several States. The act of 1865 was a restraining act, limiting the use of the land and naval forces of the United States on election days to two purposes: First, "to repel the armed enemies of the United States;" second, "to keep the peace at the polls."

It was not the desire or intention of those who introduced the bill to permit them to be used to keep the peace at the polls. They denied the right of the Federal power to have troops at the polls for any purpose, maintaining that there were no national voters, and that therefore there could be no national elections; that the State and State law alone fixed the qualifications of electors and controlled the elections; that if the peace thereat was broken it was the duty of the State to protect it. This position is undoubted, as was shown then and has been determined during the discussion this session in this House and in the Senate, notably by the honorable Senator from my own State, Mr. WALLACE, in his exhaustive speech of the 29th of May last. Yet in order to obtain relief from and security against the oppressions and wrongs to which I have referred, the democrats then in Congress submitted to the insertion of the clause "to keep the peace at the polls," and voted with great unanimity for the law of 1865.

A great victory was thus achieved by the legislative department over the lawless usages and practices of the military commanders and subalterns who, in their partisan zeal, had defied the Constitution and the law.

The period from 1865 to 1869 was that of reconstruction, during which Andrew Johnson was President, and in which the republican party had a two-thirds majority in both branches of Congress. There were irreconcilable differences between the executive and legislative departments of the Government, and I need not specify the acts of Congress depriving the Executive of his powers as Commander-in-Chief of the Army, and of the acts which curtailed and abridged his authority as the Executive of the nation. But during this period there was no interference by the Army with elections in the States, save those in the process of reconstruction.

In March, 1869, General Grant became President, and under the act of May 31, 1870, to enforce the right of the citizens of the United States to vote in the several States of this Union—designed specially

to secure the rights and privileges of the lately enfranchised population—a series of outrages were inaugurated against the ancient and constitutional rights of the citizens and voters of the States, native and adopted, which subverted law and dethroned their constitutions. In my own State at the State election in 1869 a body of marines took possession of a voting precinct in Philadelphia, kept the polls closed for an hour, and only allowed those to vote whom they pleased; and at the election of 1870 troops were used in Philadelphia, a flagrant outrage which was rebuked and denounced by the then republican governor of the State, General Geary, in his next annual message, in the following terms:

The employment of United States troops at elections, without the consent of the local and State governments, has recently received considerable attention and reprehension. It is regarded as an interference with the sovereign rights of the States which was not contemplated by the founders of the General Government, and if persisted in must lead to results disastrous to peace and harmony. The practice is one so serious in its character and so injurious in its tendencies as to merit prompt consideration and decisive action, not only by the General Assembly but by Congress. One of the complaints of the colonists against the British King was the oppression growing out of the assumption of this power. They said, "He has kept among us in times of peace standing armies without the consent of our legislature;" and what is especially pertinent to the case in point, "He has affected to render the military independent of and superior to the civil power." The alleged authority for the use of troops at our State elections is derived from the tenth section of an act of Congress, approved May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of the Union, and for other purposes," which authorizes United States marshals to call to their assistance "such portion of the land and naval forces of the United States or of the militia as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the fifteenth amendment to the Constitution of the United States." But it must be a forced construction of this law that will justify the presence of armed national forces at our places of election when no necessity exists therefor, and where their presence is calculated to provoke collision. With a good President the exercise of the power referred to might have no injurious results, but in the hands of a bad man governed by personal ambition it might prove exceedingly calamitous. Unconsciously a good President might be induced to employ it wrongfully; a bad would be almost certain to use it for his own advancement. Under any circumstances, in my opinion, it is unsafe and antagonistic to the principles that should govern our republican institutions. At the last October election United States troops were stationed in Philadelphia for the avowed purpose of enforcing the election laws. This was done without the consent or even the knowledge of the civil authorities of either the city or the State, and without any expressed desire on the part of the citizens and as far as can be ascertained without existing necessity. From a conscientious conviction of its importance I have called your attention to this subject. A neglect to have done so might have been construed as an indorsement of a measure that meets my unqualified disapproval. The civil authorities of Pennsylvania have always been and are still competent to protect its citizens in the exercise of their elective franchise, and the proper and only time for the United States military forces to intervene would be when the power of the Commonwealth is exhausted and their aid is lawfully required.

Late in October, and early in November of the same year, by the order of the Secretary of War, General Belknap, large bodies of troops—ten companies of infantry, eleven of artillery, and two hundred of the Engineer Corps—were stationed at different points in the city of New York to control the election, while at the same time, by order of the Secretary of the Navy, George M. Robeson, two frigates held the city under their guns, one being in the North, the other in the East River.

During the same year troops were stationed in West Virginia—a loyal State, ushered into existence during the throes of rebellion—and used at the polls to intimidate voters.

Not deeming the act of May 31, 1870, sufficient to secure the absolute, unlimited, and perpetual control of the elections, it was amended by the act of February 20, 1871, at the bidding of the Union League Club of New York, by which the establishment of the partisan machinery of supervisors and marshals was secured in cities of over twenty thousand inhabitants, of which there are sixty-four in the North, with a population of more than seven millions and a half, and only ten cities in the South, with a population of five hundred and thirty-nine thousand. It was designed specially for the great cities of New York, Philadelphia, Cincinnati, and Saint Louis, democratic or doubtful cities, which under ordinary circumstances would determine the political complexion of the House of Representatives.

The machinery being still imperfect, the act of 1870 was still further amended on the 10th day of June, 1872, for the purposes of the congressional and presidential elections to be held that year, by a rider on the legislative, executive, and judicial bill, whereby the provisions of the amendment of 1871 were extended to every congressional district in the United States.

By these several enactments, all passed under the pretense of protecting the rights of the lately enfranchised race, means were provided whereby, with the aid of the marshals and by the unconstitutional use of the Army, the will of the majority of the people could be stifled and the existence of the party in power could be prolonged indefinitely.

That this was the design of the act of 1870 and the amendments thereto may not be questioned; but should it be, it will only be necessary to recount the notorious practices under it in the States of South Carolina, Louisiana, and Florida, and also upon one occasion in Virginia, to fully substantiate my assertion so far as it relates to the use of troops.

In corroboration of what I have said and to show that I have not exaggerated the outrages and wrongs perpetrated under the act of 1865 by the use of the military at the polls, I beg leave to present the views of George Ticknor Curtis upon the subject, and also those of the present Secretary of State, Hon. William M. Evarts.

George Ticknor Curtis, referring to the power and duty of the Federal Government to interfere in elections in the States, says:

Upon these theories a practice has grown up of stationing Federal troops at the polls—a practice, the anticipation of which, if it could have been foreseen when the Constitution was framed, we may be sure would not only have prevented the introduction of the clause above quoted, but would have rendered the establishment of any national constitution an impossibility. I know not whence the advocates and partisans of this practice derive the power so to use the Army of the United States. If they seek for it in the clause relating to Federal elections, they seek it in a place where every sound constitutional lawyer will tell them it is not to be found. They ought to know that no people have long tolerated such a practice and preserved their liberties. It is the very practice by which the French Republic in our own times was converted into an empire, and it cannot go on in this Republic without sooner or later leading to the same kind of result. It matters not in whose hands the executive power may be. If one party can wield such a weapon, another party can adopt it in turn; and between them, in their struggles for supremacy, our liberties will be overthrown.

In his great speech delivered in New York, Mr. Evarts said:

I must confess that the news that came from Louisiana a few days ago has profoundly alarmed me. A thing has happened which has never happened in this country before, and which nobody, I trust, ever thought possible.

When the Legislature convened—and I repeat, it convened according to law, at the time and in the place fixed by law, called to order by the very officer designated by law—those persons were claimants for seats on the ground of the votes they had; some of them presenting claims so strong on the ground of majorities so large that even such a returning board as Louisiana had did not dare to decide against them; and when they had been seated in the Legislature organized as I have described, United States soldiers with fixed bayonets decided the case against them and took them out of the legislative hall by force. When that had been done the conservative members left that hall in a body with a solemn protest. The United States soldiery kept possession of it; and then, under their protection, the republicans organized the Legislature to suit themselves.

There is another thing which especially the American people hold sacred as the life element of their republican freedom. It is the right to govern and administer their local affairs independently, through the exercise of that self-government which lives and has its being in the organism of the States; and, therefore, we find in the Constitution of the Republic the power of the National Government to interfere in State affairs most scrupulously limited to certain well-defined cases and the observance of certain strictly prescribed forms; and if these limitations be arbitrarily disregarded by the national authority, and if such violation be permitted by the Congress of the United States, we shall surely have reason to say that our system of republican government is in danger.

I cannot, therefore, escape from the deliberate conviction, a conviction *conscientiously* formed, that the deed done on the 4th of January in the state-house of the State of Louisiana by the military forces of the United States constitutes a gross and manifest violation of the Constitution and the laws of this Republic. We have an act before us indicating a spirit in our Government which either ignores the Constitution and the laws or so interprets them that they cease to be the safeguard of the independence of legislation and of the rights and liberties of our people. And that spirit shows itself in a shape more alarming still in the instrument the Executive has chosen to execute his behests.

On all sides you can hear the question asked, "If this can be done in Louisiana, and if such things be sustained by Congress, how long will it be before it can be done in Massachusetts and Ohio? How long before the constitutional rights of all the States and the self-government of all the people may be trampled under foot? How long before a general of the Army may sit in the chair you occupy, sir, to decide contested-election cases for the purpose of manufacturing a majority in the Senate? How long before a soldier may stalk into the national House of Representatives, and, pointing to the Speaker's mace, say, "Take away that bauble!"

* * * * * * *

The Federal office-holders in the South became the center of partisan intrigue and trickery. The Caseys and Packards carried off State senators in United States revenue-cutters and held republican conventions in United States custom-houses, guarded by United States soldiers to prevent other republican factions from interfering. Nay, more than that, Mr. Packard, during the last election campaign in Louisiana, being at the same time United States marshal and chairman of KELLOGG's campaign committee, managing not only the campaign, but also the movements of the United States dragoons, to enforce the laws and to keep his political opponents from "intimidating" his political friends. More than that, in one State after another in the South we saw enterprising politicians start rival Legislatures and rival governments, much in the way of Mexican pronunciamientos, calculating on the aid to be obtained from the National Government—the Attorney-General of the United States called upon to make or unmake governors of States by the mere wave of his hand, and the Department of Justice almost appearing like the central bureau for the regulation of State elections. And still more than that, we saw a Federal judge in Louisiana, by a midnight order, universally recognized as a gross and most unjustifiable usurpation, virtually making a State government and Legislature, and the National Executive with the Army sustaining that usurpation and Congress permitting it to be done.

And now the culminating glory to-day—I do not know whether it will be the culminating glory to-morrow: Federal soldiers, with fixed bayonets, marching into the legislative hall of a State, and invading the Legislature assembled in the place, and at the time fixed by law, dragging out of the body, by force, men universally recognized as claimants for membership, and having been seated; soldiers deciding contested-election cases and organizing a legislative body; the Lieutenant-General suggesting to the President to outlaw by proclamation a numerous class of people by the wholesale that he may try them by drumhead court-martial, and then the Secretary of War informing the Lieutenant-General by telegraph that "all of us," the whole Government, have full confidence in his judgment and wisdom. And, after all this, the whites of the South, gradually driven to look upon the National Government as their implacable and unscrupulous enemy, and the people of the whole country full of alarm and anxiety about the safety of republican institutions and the rights of every man in the land.

He who in a place like ours fails to stop or even justifies a blow at the fundamental laws of the land makes himself the accomplice of those who strike at the life of the Republic and at the liberties of the people.

* * * * * * *

If you really think that the peace and order of society in this country can no longer be maintained through the self-government of the people under the Constitution and the impartial enforcement of constitutional laws; if you really think that this old machinery of free government can no longer be trusted with its most important functions, and that such transgressions on the part of those in power as now pass before us are right and necessary for the public welfare, then, gentlemen, admit that the Government of the people, for the people, and by the people is a miscarriage. Admit that the hundredth anniversary of this Republic must be the confession of its failure, and make up your minds to change the form as well as the nature of our institutions; for to play at republic longer would then be a cruel mockery. But I entreat you do not delude yourselves and others with the thought that by following the fatal road upon which we are now marching you can still preserve those institutions; for I tell you, and the history of struggling man-

kind bears me out, where the forms of constitutional government can be violated with impunity, there the spirit of constitutional government will soon be dead.

* * * * *

But still more, the people have begun to understand, and it is indeed high time they should understand, that the means professedly used to prevent and suppress outrages are producing far worse fruit than the outrages themselves; that—and hear what I say—the lawlessness of power is becoming far more dangerous to all than the lawlessness of the mob.

The marshals were used in all the great cities of the North and in nearly every closely contested congressional district, at an expense of more than $285,000 in 1876 and of $225,000 in 1878.

In view of these evils and outrages upon the right of suffrage, the democratic party, being in a majority in both branches of the National Legislature, resolved to exercise every constitutional power to remedy them; therefore, early in this session, we passed the Army appropriation bill, which contained the following provisions:

SEC. 6. That section 2002 of the Revised Statutes—

Which is the codified act of February 25, 1865, I have before read—

be amended so as to read as follows:

No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States: *Provided*, That nothing contained in this section, as now amended, shall be held or deemed to abridge or affect the duty or power of the President of the United States, under section 5297 of the Revised Statutes, enacted under and to enable the United States to comply with section 4 of article 4 of the Constitution of the United States, on application of the Legislature or executive, as provided for in said section.

Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than $5,000, and suffer imprisonment at hard labor not less than three months nor more than five years.

It will be observed that the section is a re-enactment of the codified act of 1865, save that it strikes therefrom the right to use troops or armed men "to keep the peace at the polls."

Under the law as it then stood, and still exists, the two purposes for which alone any troops or armed men can be used at any place where any general or special election is held in any State are, first, to repel the armed enemies of the United States, and, second, to keep the peace at the polls, which means to prevent violence, disturbance, or disorder, and, as has been well said by the gentleman from Kentucky, [Mr. CARLISLE,] "every violation of the law is not necessarily a breach of the peace, and therefore it is not every violation of law that can be suppressed or prevented by the use of the troops or armed men at the polls under the act of 1865."

It has been shown how flagrant have been the wrongs inflicted upon the rights and liberties of the people under the pretense of keeping the peace at the polls. The issue raised then and undetermined to-day is whether there shall be a free and unfettered ballot, or whether we shall be ruled, dominated, and enslaved by enthroned power, guarded and shielded by the bayonet.

Our position on such an issue might not be misunderstood; and we engaged in its determination with faith born of conviction, with determination based upon its absolute right and justice. We did not doubt then, I believe now, that the presence of the military at the polls, or their interference at elections in any manner, for any purpose whatever, is abhorrent to the minds and feelings of a vast majority of the American people. I might say to all, unless, indeed, there be those who desire a "strong government" of centralized and despotic power, and their number, I trust, is so small as to render them unworthy of consideration. To insure legislative success and a speedy determination of the issue we placed the repealing clause upon the Army appropriation bill. The honorable gentleman from Ohio [Mr. GARFIELD] first entered the lists against it, declining to discuss its merits, but inveighing against our proposed method of legislation. He declared it to be against the Constitution, revolutionary to the core, destructive of the fundamental elements of American liberty—the free consent of all the powers that unite to make laws!

To show how unfounded is the objection of the gentleman to the method—placing the repeal upon an appropriation bill—and how insane is his charge of revolution, I beg to remind him and the country that the republican party, in the period from 1861 to 1865, during which it had a majority in both Houses, (according to a carefully prepared statement made by the honorable gentleman from Texas, [Mr. REAGAN,] and presented in his speech delivered on the 3d of April last,) passed eighty-three general appropriation bills upon which there was legislation of a new and general character. And from another statement I have before me it is shown that since the foundation of the Government two hundred and seventeen appropriation bills have been passed upon which there was new and general legislation, and that upon thirty of them it related to the Army.

Again, in 1856, the republicans having a majority in this House, the following proviso or rider was placed on the Army appropriation bill:

Provided, however, and it is hereby declared, That no part of the military forces of the United States, for the support of which appropriations are made by this act, shall be employed in the enforcement of any enactment of the body claiming to be the territorial Legislature of Kansas until such enactment shall have been affirmed and approved by Congress. And this proviso shall not be so construed as to prevent the President from employing an adequate military force, but it shall be his duty to employ such force to prevent invasion of said Territory by armed bands of non-residents or any other body of non-residents acting or claiming to act as a *posse comitatus* of any officer of said Territory in the enforcement of any such enactment, and to protect the persons and property therein, and upon the national highways leading to said Territory, from all unlawful searches and seizures; and it shall be his further duty to take efficient measures to compel the return of and withhold all arms of the United States distributed in or to said Territory in pursuance of any law of the United States authorizing the distribution of arms to the States and Territories.

This proviso directs the purposes for which the money appropriated by the bill shall *not* be used; it next directs the purposes for which the Army *shall* be used, and, finally, it directs the President to refrain from doing that which by law of the United States he was authorized and directed to do, thereby changing existing law by a proviso on an appropriation bill.

The bill, with the proviso attached, passed the House and was sent to the Senate, where the proviso was stricken out—the democrats having a majority in that body. It was sent to a conference, which failed to agree, and Congress adjourned. The appropriation for the Army failed because the republicans refused to relinquish their right to place the proviso on the bill.

It is thus shown that by the usual and unbroken practice of the republican party when in power in both branches of the National Legislature, and when they had a majority in only one, new legislation, of not only affirmative and negative, but also of a repealing character, was placed upon appropriation bills; and in 1856 they carried their claim of right to the extreme extent "that the Government should starve"—if failing to appropriate for the Army be to starve the Government, as is stoutly asserted by the gentleman from Ohio, [Mr. GARFIELD,]—rather than yield their right to direct how the appropriations made for its support should be employed by the President.

Again, in 1872, the honorable gentleman from Ohio, [Mr. GARFIELD,] being at that time chairman of the Appropriations Committee, claimed the right to put general legislation upon an appropriation bill in the most "stalwart" terms. He desired to put an amendment to the enforcement act of February 28, 1871, upon the sundry civil appropriation bill. The democrats resisted it. He denounced their conduct as "factious and revolutionary;" declared it must be voted up or voted down, or that the right of parliamentary government in this country would be abandoned, and a serious, if not fatal wound, would be inflicted upon the freedom and efficiency of the National Legislature. I quote the substance of his remarks. They will be found in full on page 4440 of the RECORD of the Forty-second Congress.

And, sir, the country will not fail to remember that in 1867, Andrew Johnson being President, the republican party, being in a majority in both Houses, ingrafted legislation upon the Army appropriation bill which virtually deprived him of his constitutional functions as Commander-in-Chief of the Army, and denied to ten States of the Union their constitutional right to protect themselves in any emergency by means of their own militia. They coerced the Executive to sign the unconstitutional provision. His message accompanying his approval of the bill is brief, and so full of suggestion as to the character of the legislation that I will reproduce it:

To the House of Representatives:

The act entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," contains provisions to which I must call attention. Those provisions are contained in the second section, which in certain cases virtually deprives the President of his constitutional functions as Commander-in-Chief of the Army, and in the sixth section, which denies to ten States of this Union their constitutional right to protect themselves in any emergency by means of their own militia. These provisions are out of place in an appropriation act. I am compelled to defeat these necessary appropriations if I withhold my signature to the act. Pressed by these considerations, I feel constrained to return the bill with my signature, but to accompany it with my protest against the sections which I have indicated.

ANDREW JOHNSON.

MARCH 2, 1867.

Thus, sir, I have established, fully and satisfactorily, I doubt not, to the mind of every candid person that we have abundant authority in the practice of, and the precedents set by, the republican party, first, to attach general legislation to appropriation bills; second, to permit an appropriation bill to fail rather than surrender any proviso we deem necessary regulating the use of the Army or defining the purposes for which it shall not be used; and, thirdly, to coerce the President to sign an appropriation bill containing provisions clearly unconstitutional should party exigency make it necessary. To each and every of the propositions the republican party is committed by its action in the past.

I grant you, sir, that if we followed all the precedents thus established by republican legislation and legislators we would be justly chargeable with the crime of "revolution;" but until we do, let the gentleman from Ohio [Mr. GARFIELD] hold his peace. He is skilled in revolution—judged by his own test of what constitutes it—since he voted for the act of March 2, 1867, which President Johnson was coerced to sign by a radical Congress for the reason that it was an appropriation bill. He should perfectly understand what constitutes revolution; and according to his own definition he has been clearly guilty of it; but he is not justified in confounding our legitimate, regular, and constitutional method with that adopted by himself and his fellow-republicans in their action upon the Army appropriation bill of 1867.

Time will not permit me to reply to the arguments of those on the other side who discussed the merits of the section. They were chiefly based upon the wrong and unconstitutional assumption that the Fed-

eral Government has power to supervise, control, and direct elections. There cannot be an election without electors, the Constitution of the United States has not conferred the right of suffrage on any one, the United States have no voters of their own creation in the States, and if they have no voters, and therefore no elections, by what reasoning can it be held that the Army may be used to keep the peace at the polls?

My reasoning upon the proposition is fully sustained by the Supreme Court in the case of Minor *vs.* Happersett, (21 Wallace, 270,) in which it is said:

The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

It certainly is nowhere made so in express terms. The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. The members of the House of Representatives are to be chosen by the people of the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State Legislature. Senators are to be chosen by the Legislatures of the States, and necessarily the members of the Legislature required to make the choice are elected by the voters of the State. Each State must appoint in such manner as the Legislature thereof may direct the electors to elect the President and Vice-President. The times, places, and manner of holding elections for Senators and Representatives are to be prescribed in each State by the Legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators. It is not necessary to inquire whether this power of supervision thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme until Congress acts.

The amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guarantee for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.

In The United States *vs.* Cruikshank, 2 Otto, 555, the Supreme Court reaffirm the doctrine in these words:

In Minor *vs.* Happersett, 21 Wall., 178, we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States. In The United States *vs.* Reese *et al.*, *supra*, page 214, we hold that the fifteenth amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship; but that exemption from discrimination in the exercise of that right on account of race, &c., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.

The same authority declares the line of distinction between the Federal and State governments in these words:

The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the Constitution or laws of the United States except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.

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The first amendment to the Constitution prohibits Congress from abridging "the right of the people to assemble and to petition the Government for a redress of grievances." This, like the other amendments proposed and adopted at the same time, was not intended to limit the powers of the State governments in respect to their own citizens, but to operate upon the National Government alone. Barron *vs.* The City of Baltimore, 7 Pet., 250; Lessee of Livingston *vs.* Moore, id., 551; Fox *vs.* Ohio, 5 How., 434; Smith *vs.* Maryland, 18 id., 76; Withers *vs.* Buckley, 20 id., 90; Pervear *vs.* The Commonwealth, 5 Wall., 479; Twitchell *vs.* The Commonwealth, 7 id., 321; Edwards *vs.* Elliott, 21 id., 557. It is now too late to question the correctness of this construction. As was said by the late Chief-Justice, in Twitchell *vs.* The Commonwealth, 7 Wall., 325, "the scope and application of these amendments are no longer subjects of discussion here." They left the authority of the States just where they found it, and added nothing to the already existing powers of the United States.

The particular amendment now under consideration assumes the existence of the right of the people to assemble for lawful purposes, and protects it against encroachment by Congress. The right is not created by the amendment; neither was its continuance guaranteed, except as against congressional interference. For their protection in its enjoyment, therefore, the people must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States.

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The rights of life and personal liberty are natural rights of man. "To secure these rights," says the Declaration of Independence, "governments are instituted among men, deriving their just powers from the consent of the governed." The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these "inalienable rights with which they were endowed by their Creator." Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State than it would be to punish for false imprisonment or murder itself.

The fourteenth amendment prohibits a State from depriving any person of life liberty, or property without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. As was said by Mr. Justice Johnson, in Bank of Columbia *vs.* Okely, 4 Wheat., 244, it secures "the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributed justice." These counts in the indictment do not call for the exercise of any of the powers conferred by this provision in the amendment.

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The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it, and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guarantee.

By the foregoing it is solemnly determined that under our system the only voters are those determined to be such by the constitutions and laws of the several States, by which alone the right is given, and by which alone it can be controlled. There is but one constitutional limitation upon that power, which is that contained in article 15, section 1, of the amendments to the Constitution of the United States, as follows:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

This is the solitary prohibition upon the power of the States, and as they alone can create voters no other power may constitutionally attempt to control elections held by them, and all arguments to the contrary are against the theory of the Federal system, unwarranted by the Constitution, and unsupported by every construction of its meaning given by the court of last resort. The opinions I have cited clearly demonstrate this, and I may not longer dwell upon this branch of the case.

After a prolonged and exhaustive debate in this body and in the Senate the bill was passed, sent to the President, and returned with his objections on the 12th of April last. If I understand them, they are, first, because the repeal of the clause in the act of 1865 "to keep the peace at the polls" would deprive the civil authorities of the United States of all power to keep the peace at congressional elections; and, second, because it was presented to him as a rider or proviso upon an appropriation bill and not as a separate and independent measure. He expressly declares that under existing law there can be no military interference with elections.

If there be constitutional authority (which I utterly deny under the authorities I have cited) for the civil power of the United States to keep the peace at congressional elections, we did not intend to interfere with that or with the exercise by the civil power at any time or place of any rightful authority conferred upon it by the Constitution and laws of the United States. Nor were we unwilling to adopt the suggestion of the President as to the form of legislation; therefore a separate act was at once framed and passed promptly by both Houses of Congress, and is as follows:

Be it enacted, &c., That it shall not be lawful to bring to, or employ at, any place where a general or special election is being held in a State, any part of the Army or Navy of the United States, unless such force be necessary to repel the armed enemies of the United States, or to enforce section 4, article 4 of the Constitution of the United States, and the laws made in pursuance thereof, on application of the Legislature or executive of the State where such force is to be used; and so much of all laws as is inconsistent herewith is hereby repealed.

This bill was returned with his objections on the 29th of April. It was honestly intended by those who framed and passed it to meet every objection urged by the President in his veto of the first bill. There was no desire or design on the part of the majority in Congress to abridge his authority in his use of the Army, save for the purpose of keeping the peace at the polls, and this bill did not prevent the civil power from using any other force thereat for any purpose which is authorized by the Constitution and law. By the act of 1865 the Army could not be used at any place where any general or special election was being held save, as I have before stated, to repel the armed enemies of the United States or to keep the peace at the polls. At such times and places it could not be used to enforce the extradition laws or prevent crimes against election laws, or to enforce quarantine regulations, or neutrality laws, or those relating to Indian reservations, or the civil rights of citizens. All these things and every other thing, save to repel armed enemies and to keep the peace at the polls, was positively prohibited by the act of 1865. Indeed, so sweeping is the prohibition as to its use that it cannot be used to protect a State against invasion or against domestic violence where any general or special election is being held; and in these regards the bill last vetoed by the President was an enlarging statute, giving him greater powers than he now possesses, since it makes it lawful to employ the Army and Navy to enforce section 4, article 4 of the Constitution of the United States, and the laws made in pursuance thereof, on application of the Legislature or the executive of the State where such force is to be used, and yet the President withheld his signature because, as he alleges, it deprives him of the power to use the Army for purposes some of which I have enumerated, although, as I have shown, he does not now possess it, having been shorn of it by the act of 1865.

By what logic the President arrives at the conclusion that the bill deprives him of a power which clearly he does not possess is beyond my comprehension. To me it is painfully evident that the President, although he vigorously declares "that any military interference whatever is contrary to the spirit of our institutions and would destroy the freedom of elections," and "that under existing law there can be no military interference with elections," yet he would willingly let the "Army starve" rather than yield his right to use it to keep the peace at the polls. Doubtless he has a deep and abiding love for this provision of law. It is the foundation-stone in his title to the Presidency; under it his predecessor during the presidential election in 1876 sent troops to South Carolina, Florida, and Louisiana, but I may not

stop to recount the outrages, villainies, and wrong committed in those States in that year under the specious pretext of "keeping the peace at the polls." Suffice it to say that by general consent, without that presence of the military, the greatest political crime which blackens our history would have been impossible. Had the people of those States been left to express their views at the polls unawed by military power, had the thieves and villains composing their returning boards been unsupported and unprotected by Federal troops in their crimes against the ballot, who dare question what would have been the result? And yet to-day he who above all other men has personally profited by the interference of troops at the polls and at the Capitol of the nation during the electoral count, loudly and solemnly proclaims that under existing laws there can be no military interference with elections.

The same laws exist to-day which existed in 1876. I grant you, sir, that under a just man, one mindful of his oath, there can and would be no interference. And yet, under a weak one, controlled by those who are ambitious, designing, and unscrupulous, there will be a repetition of past crimes and villainies. The power to keep the peace at the polls will be used to perpetuate existing administration or to place in supreme executive authority some stronger and more daring person in defiance of the popular will. I do not deliberately charge that this is the cause of the persistent refusal of the Executive to conform to the will of the people on this subject, as expressed by a majority of both branches of the legislative department of the Government; and yet, sir, there must be some strong and controlling reason. It is the first time in our history that a repealing statute has been vetoed, and it has rarely happened that the great power has been exercised on a mere question of policy. The power was conferred upon the President, according to Mr. Hamilton in the Federalist, primarily to enable the Executive to defend himself; and, secondarily, to increase the chances in favor of the community against the passing of bad laws through haste, inadvertence, or design.

By the repeal of the clause in the act of 1865 permitting the use of troops at the polls to keep the peace, there is no assault made upon the President or any of his constitutional prerogatives, nor is it the enactment of a bad law, leaving as it does the use of the Army for precisely the same purposes as it had existed from the days of Washington to those of Lincoln. Nor has it been passed "through haste, inadvertence, or design." As to haste, no subject has ever been more calmly, fully, and deliberately considered by the National Legislature—not only once, but twice. Nor was it passed through inadvertence, because the purpose was not only well understood but proclaimed and avowed by every one who voted for the repeal. And finally, it was not passed by "design;" that is, with the intention of achieving an improper or unconstitutional end, unless indeed it may be charged that it is an improper design to free the ballot, to wrench the grip of the military power from the throat of the body-politic and restore to the people their ancient and inestimable privilege of free elections, uninfluenced and unawed by the presence of soldiers at the polls. These, sir, are the designs of every democrat on this floor; let him who charges them as being unworthy or improper say the word!

It thus appears that the Executive has exercised the veto upon no one of the grounds or for no one of the purposes for which Mr. Hamilton, the most ardent advocate of executive power, says it was conferred.

The views of the Great Commoner, Henry Clay, upon the veto power are so pertinent to this issue that I will be pardoned for quoting them. Mr. Clay, in his speech in the Senate on the veto of the bank bill, in 1832, said:

> The veto is an extraordinary power, which, though tolerated by the Constitution, was not expected by the convention to be used in ordinary cases. It was designed for instances of precipitate legislation, in unguarded moments. * * * The veto is hardly reconcilable with the genius of representative government. It is totally irreconcilable with it, if it is to be frequently employed in respect to the expediency of measures, as well as their constitutionality. It is a feature of our Government borrowed from a prerogative of the British King. And it is remarkable that in England it has grown obsolete, not having been used for upward of a century. * * * As a co-ordinate branch of the Government, the Chief Magistrate has great weight. If, after a respectful consideration of his objections urged against a bill, a majority of all the members elected to the Legislature shall still pass it, notwithstanding his official influence and the force of his reasons, ought it not to become a law? Ought the opinion of one man to overrule that of a legislative body twice deliberately expressed?

Again, in 1819, Mr. Clay being Speaker of the House, an Army bill was under consideration in Committee of the Whole. Mr. Trimble moved an amendment allowing troops to be used to make roads and appropriating money for that purpose. This involved the question of internal improvements. Mr. Clay said:

> He thought Congress had been wanting in its duties in delaying so long to legislate upon this subject. It was proper to pass this bill and present it to the President, and if he refused to sanction it, then Mr. Clay declared he had no hesitation in avowing that he should be ready to proceed to hostilities with the President on this point, and withhold every appropriation until he conceded the point.

These views of one of the foremost men of his generation furnish food for reflection under the circumstances which surround us. The opinion of one man has overruled that of the Legislature twice deliberately expressed, and there is little consolation in the reflection that that one man in no sense represents the views of a majority of the American people. On the contrary, they decided against him in the election of 1876, by a majority of a quarter of a million of the popular vote and he holds his place to-day in defiance of them, under the forms of law, it is true, yet as clearly in defiance of them as if he himself had seized the Presidency by violence. Perjury, forgery, and fraud, sanctified by an electoral commission, are the muniments of his title under which he now defies the will of the people, defeats their wishes, and frustrates their hopes. A more flagrant abuse of the purposes of the veto power, as defined by Hamilton and Clay, has never occurred in our history, whether we consider the justice of the proposed legislation or the title to his office of the person interposing the objections. If Mr. Clay was ready to proceed to hostilities with the patriot President, Monroe, in 1819, by withholding appropriations until he would consent to sign an Army appropriation bill which contained a clause for certain internal improvements, how much greater cause have we at this time to proceed to hostilities with the President, whose title is tainted, for refusing to sign an Army appropriation bill which contains a section securing the freedom of the ballot!

In my deliberate judgment there never was an occasion in our history when the legislative branch of the Government would have been more justified in proceeding to hostilities, and that we do not do it is because we are unwilling by any act of ours to give the slightest pretext for the base and unfounded charge that our object is to "starve the Government" or to "stop its wheels."

The President has deliberately informed us that in no event will a bill repealing his right to use the Army at the polls receive his approval, saying in effect that the Army may starve, that the wheels of government may be stopped rather than he will relinquish the right to use the Army as an instrument to maintain the political ascendency of the organization to which he belongs. That it has constantly been so used in the past is undenied and undeniable. If the power remains and the means are furnished to execute it, who doubts it will be so used in the future? To this the majority in Congress, for themselves and the great body of the people whom they represent, have objected, do now object, and will always object, solemnly and determinedly; and although under the Constitution it may not be in our power to repeal the law, under cover of which these enormities have been perpetrated in the past, yet it is in our power to prevent them, and we intend to exercise it by refusing to appropriate one dollar to be used for the subsistence, equipment, transportation, or compensation of any portion of the Army to be used for such purpose. It is our right to withhold appropriations, or if we vote appropriations, to say for what purposes they shall or shall not be used.

In the bill under consideration which I have had the honor to report we have inserted a section (number 6) declaring our purposes as to the application of the moneys therein appropriated. It is as follows:

> SEC. 6. That no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State.

The language is similar to that in the third clause of the bill, which is as follows:

> No money appropriated by this act shall be paid for recruiting the Army beyond the number of twenty-five thousand enlisted men, including Indian scouts and hospital stewards.

In each case no money is appropriated for a particular purpose These restrictive provisions must be construed in connection with section 3678 of the Revised Statutes of the United States, which is as follows:

> SEC. 3678. All sums appropriated for the various branches of expenditures in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

No money having been appropriated to an army to be used as a police force to keep the peace at the polls, it is manifest that, under the prohibition contained in the sixth section of the bill, the Army, or any portion thereof, cannot be used for such purpose during the fiscal year commencing on the 1st day of July next, and it would be clearly illegal to use it for that purpose.

If this bill should pass both branches of Congress and be signed by the President we will have secured for one year the ballot from the control of the bayonet. When we make appropriations for the year next following we can and will again place similar restrictions upon the Army bill.

The question is thus left an open one, to be discussed by the people at the polls in 1880. If they desire to prevent the use of the Army at the polls by permanent and fixed legislation they will elect a democratic Congress and a democratic President in that year.

With the passage of this bill the contest, begun last March, will be ended for the present. We will not have obtained all we desired or first attempted to secure—permanent legislation prohibiting the use of the Army to keep the peace at the polls. But by withholding appropriations we have made it illegal to use it for any such purpose during the coming year, and can do the same for the following year.

It may be objected that the President will continue to use the Army at the polls under authority of the act of 1865, notwithstanding our explicit refusal to appropriate a dollar for its subsistence, equipment, transportation, or compensation while so used. Should he do so, he will be guilty of a flagrantly illegal act, under the terms of section 3678 of the Revised Statutes I have heretofore cited. I am unwilling to believe that he will be so regardless of his duty and of his oath; or that, with the express legislative probibition contained in this bill, he will, in defiance of law, use the Army for the political advantage

of his party under the pretense of keeping the peace at the polls. I cannot, will not believe it! Should he do so, we have in our power the constitutional remedy of impeachment. My hope is that we may never have even the most shadowy grounds for its application.

I may not fail to congratulate the whole people upon the effects of this prolonged discussion. It has served to refresh their recollection of the outrages which have been committed upon the rights of voters in many of the States under color of the authority given by the act of 1865, to use the Army to keep the peace at the polls—outrages which have exerted baleful influence in the governments, State and national—outrages which have imposed rulers upon each against the deliberately expressed will of the people, and more than once have forced sovereign States to be represented in the National Legislature by strangers and adventurers. It has served to fully inform and arouse them to the dangers which imperil and constantly menace the freedom of the ballot. Our duty in the premises has been fully and faithfully performed. If in the future they fail to take measures to remedy and absolutely prohibit a recurrence of these outrages, theirs will be the blame, not ours. And if I may congratulate them on the effects of the discussion I may not fail also to congratulate them upon its immediate results, for by the passage of this bill, when it shall be approved, we will for the present have secured for them immunity from military presence and interference at the polls to keep the peace, or, in other words, to maintain the supremacy of the party in power.

When this contest was first entered on, the gentleman from Ohio [Mr. GARFIELD] and others here, who but re-echoed his sentiments and charges, denounced our intentions as revolutionary to the core; that the Constitution was assailed by revolution; that we were attempting to coerce the President, and that desiring to destroy the Government, and being too cowardly to attempt it openly and boldly, we resorted to indirect means by withholding supplies from the Army, thereby starving it to death.

Loudly and defiantly these charges were made here and reiterated elsewhere. Under them, as rallying cries, it was attempted to revive the passions and prejudices born of the civil war, and amid the unholy and accursed din to raise and unfurl once more that bloody flag upon which no other legend is inscribed than that of Hate, under which the gentleman from Ohio has won and assisted to win so many political victories in the past. With a facility and alacrity of a politician, but wanting the foresight and wisdom of a statesman, the gentleman has attempted to revive issues which during our last session he declared to be dead and buried.

How vain and fruitless have been his efforts to disturb or alarm the people by his stalwart cries is grandly manifest. In all our borders are the signs and sounds of reviving and returning industry. Mines, mills, forges, furnaces, and factories of all descriptions, which for years have been idle, give evidence of quickening life and activity. The people everywhere are intent upon commercial, agricultural, mechanical, manufacturing, and mining pursuits and interests. They have ceased to tolerate, much less to receive with approval, appeals to their passions and prejudices. They well understand, having learned it to their bitter cost, how vain it is to expect that one section of the country may be prosperous and happy while the other is in poverty and political bondage. They do not fail to remember that our country is a great unit of many vast and varied interests mutually dependent one on the other, all upon each; and that man who for the sake of personal ambition, or that party which for political ends attempts to disrupt the fraternal relations between the people of all sections which under the healing processes of time, the kindly influences of our regenerated civilization, and the absolute necessities of our geographical and political structure are daily and yearly becoming stronger and more indissolubly united, will meet with prompt rebuke and sure condemnation.

No man or party ever thrived or continued to thrive on hate. The wisest and best in all the past have left their warnings against it. Their teachings are in favor of peace and good-will among men and nations. To engender or encourage hate is against the precepts of religion. Love your enemies, do good to them who despitefully use you, are the teachings of the Master. These blessed words are deeply engraven on the hearts of men wherever they have heard of the divine utterances of the Nazarene.

It is most gratifying, sir, that the premeditated and labored efforts of the gentleman from Ohio and his cohorts have failed to rekindle the dying embers of sectional hate and animosity, for the reasons I have just recounted, and because the doctrines they advocate are abhorrent to the genius of our Government, to the spirit of our institutions and to the instincts of our people. In a monarchy, under the rule of an emperor, the bullet may be used to control the ballot, but among a free people, never!

Upon this issue, so broadly and defiantly made, we are more than willing to take an appeal to the people. We court and desire it, and as we have been victorious on this legislative field, so will we be, I do not question, upon that wider and decisive one where our masters will be judges and jurors, and we the disputants. They shall not decide without knowing the consequences of their decision and the full measure of its deep significance. If in our favor, then will the form and symmetry of our political structure be restored, and, better still, its ancient spirit and practice.

Never again will trained bands of armed soldiers enforce the will of their master at the polls, either to elect Congressmen, Senators, Governors, or Presidents. The people will determine who their rulers shall be without military presence, influence, intimidation, or control. But if for any reason, either by the successful avoidance and concealment of the issue or by the introduction of others which may distract and deceive them, their verdict should be adverse to us, it will be forging anew the fetters which bind us; it will place a weapon, brightened and sharpened, in the hands of the Executive, to be used, as I fear, for their political bondage and death. Our forms of government might indeed remain, but if its chief place should be filled by one regardless of all the traditions of the past, of all constitutional limitations, and of all legal restraints, who will deny that the spirit and essence will have departed and that under the right to use the Federal Army at the polls, and having at his command another and more potent host of marshals, deputy marshals, and supervisors, a consolidated government would be established upon the ruins of the Federal system, republican in form but kingly in reality?

The Third Napoleon was as truly monarch of France when he bore the simple title of "president" as when he afterward assumed the purple. History is philosophy teaching by example; we are neither too old nor too wise as a people to profit by it.

Mr. Chairman, I have the honor in part to represent on this floor that proud and ancient Commonwealth whose glory it is that she was founded by "deeds of peace." She has been always jealous of military presence or interference at the polls, and has guarded by every means in her power the free and unfettered exercise of the right of suffrage. It is ordained by her constitution that:

Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

No standing army shall, in time of peace, be kept up without the consent of the Legislature, and the military shall in all cases and at all times be in strict subordination to the civil power.

Electors shall in all cases, except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

And in her statutes it was written more than three-quarters of a century ago, and it is her law to-day, that—

No body of troops in the Army of the United States, or of this Commonwealth shall be present, either armed or unarmed, at any place of election within this Commonwealth during the time of such election: *Provided*, That nothing herein contained shall be so construed as to prevent any officer or soldier from exercising the right of suffrage in the election district to which he may belong, if otherwise qualified according to law.—*Brightly's Purdon's Digest*, 1872; Pensylvania; section 124, page 562.

These constitutional and legal provisions embody and set forth the views of her people upon the great question at issue. I commend them to the special consideration of all her representatives in this body. How under them any one can vote to permit the use of the Federal Army "to keep the peace at the polls" I do not understand. For myself, sir, I would consider it a clear violation of a Constitution which I have sworn to support and of laws which I am bound to obey. Therefore, sir, in obedience to the spirit, teachings, and direct commands of the organic and statute laws of my State, which, in my opinion, are in strict accord with the Constitution of the United States, I shall vote to withhold all supplies "to be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State." To the great body of the people of Pennsylvania I shall confidently appeal for my justification and support, as in so doing I will have been obedient to her constitution and law.

Judicial Appropriations.

SPEECH OF HON. MOSES A. McCOID,

OF IOWA,

IN THE HOUSE OF REPRESENTATIVES,

Wednesday, June 25, 1879,

On the subject of extending the judicial appropriations.

Mr. McCOID. Mr. Speaker, we have a history of one hundred years. That history presents one irreconcilable conflict of ideas about our Government. We were divided; we were discordant. Were we the servants of two masters or the servants of one? Upon this we quarreled. Some have said they had two masters, and in vain they tried to serve them. It is written higher than constitutions—

No man can serve two masters; either he will hate the one and love the other, or else will hold to the one and despise the other.

Patriots saw the great conflict and trembled. They prayed, they compromised, they postponed, but it was in vain. The country could not exist without eliminating from the public mind forever one of these conflicting ideas. One of them had to die. It was a struggle for life, a struggle for sovereignty.

In the triumph of one idea was the dividing of States, a part from the whole, then from each other, until the continent should be patched with petty nations. This idea was that of State sovereignty; a union at will of sovereign States. The other was the idea of nationality;

the sovereignty of the nation over the States, the doctrine that the States were but the means of the exercise of that nationality in republican form; but instruments of the nation; but counties of the Republic.

This idea demanded the perpetuity of the Union and its indestructibility. It proclaimed its power to live, to defend itself, to coerce submission not only of citizens, but of States themselves.

In vain men tried to serve both; they gravitated irresistibly to one or the other. But right there hung the life of this great nation, and so long as that issue was unsettled the Government was but an experiment; constitutional liberty was in danger; and more, to settle it war was inevitable. If it is not settled now, but remains a question whether the United States is alone the sovereign, then farewell to our peace. For that conflict is irreconcilable. Two sovereigns cannot at the same time claim obedience. You cannot be half a Georgian and half an American. You cannot have a divided allegiance. If the war for sovereignty did not decide the United States to be the supreme object of our allegiance and protector of our rights, then nothing but another war will. The only appeal from the last war is to another and more terrible one. Does any one deny that this was the subject of controversy in the last war? You must do one of two things: either deny that the issue of the war was State rights, with all that includes as an assertion of State sovereignty, or you must admit that by that war the sovereignty of the nation was determined with its right to assert and defend its existence and the rights of its citizens everywhere. Suppose you deny that such was the issue of war. Then what was? I wish men would speak more accurately. Slavery was not an issue of war.

That there have been tendencies in our midst which, in their silent sweep, almost wrecked the Republic no one will deny; and it is equally plain that these tendencies culminated in the principles or theory of constitutional interpretation for which the confederate armies of the rebellion fought. Let us, then, dispassionately, and in the exercise of common sense and the most careful regard for personal feelings, determine the issue of the war.

First. It is too narrow a view to say it was a contest of 1861-'65. Its source lies far back in the nation's history. It was the logical sequence of doctrines upon which the American people joined issue over the unpublished manuscript of the Constitution of the United States.

Second. It is a frequent error to confound things which were mere accidents or incidents of the war with its true issue. For instance, the grievances, real or imagined, did not become the issue of the conflict. They were the instigating causes to the assertion of the doctrines for which men fought, but they were not the claims asserted by war. Slavery was not an issue, no matter what the result as to it was, either in the war or in the Constitution. The agitation of anti-slavery was not an issue, nor were any of the settled principles of the constitutional amendments, although they were the outgrowth of its continuance.

The right to secede was but a secondary and incidental issue. Its attempt was an act of the war along with the battles of its progress—Gettysburgh, Donaldson, Antietam, Shiloh, Corinth, or Vicksburgh. It was closely allied to the great issue, and the direct assertion of it in practical form; but it was not the point of contest, and it is not an acceptance of the result, it is not an acquiescence in the decision of arms, merely to agree that a State cannot forcibly secede. None of these, however potent their influence upon the action of men, were war issues. The war was inaugurated and carried on to its close upon the assertion of a principle of constitutional construction. Its prosecutors on both sides claimed to be within the intent of the Constitution. All the acts of the great rebellion were by its adherents justified, and are to-day justified, upon theories of right, as for sacred principles, and a fidelity to a certain school of political faith. It is in this spirit that General Preston, in his oration at the unveiling of a confederate monument a few days ago, said, amid the wild cheers of his auditors:

> The children's children of these women will come in reverent adoration of the cause it commemorates, and in pious gratitude to the men who illustrated that cause and to the women who consecrated this memorial, and in their prayers here, kneeling to an immutable God, will beseech Him, by the mightiness of His arm and the overshadowing of His spirit, to give them those great and excellent things for which their fathers died—truth, right, and liberty.

That principle was State rights or State sovereignty, in antagonism to the alleged limited powers committed to the Union by these States. The different schools of constitutional construction began, as I just said, over the Constitution at its adoption. It was intended to be settled by some of the wordings of that instrument in saying, "We, the people," instead of "We, the delegates or deputies of the sovereign and independent States;" and in its ratification, not by the Legislatures of the States, but by the people in convention.

Its first formal and dangerous assertion was in the Virginia and Kentucky resolutions of 1798. At the beginning of the second generation it was again asserted by Calhoun in still more dangerous form, and in the third generation, under the leadership of the disciple of Calhoun, Jefferson Davis, it culminated in its final struggle for life—the rebellion. In the whole history of this treasonable doctrine there is a progressiveness, a logical sequence to secession and rebellion, or some other fatal antagonism of the States to the nation; and prime issue of the war as it was, its significant and appropriate leader was fittingly Jefferson Davis. He, above all others, was the impersonation of the doctrine of primal State allegiance or State sovereignty. It was his cardinal political principle; it is yet. In the language of his biographer, "it constituted the controlling inspiration of a long career of eminent public service." And again he says of Davis: "Unreservedly committing himself then, (his first public political speech,) he has steadfastly held to the State-rights creed as the basis of his political faith and the guide of his public conduct." That disunion, secession, treason, and rebellion were at first contemplated; that they were believed to be involved in this fatal creed, is not asserted. That it was not vainly supposed that the doctrine, in some undefinable sense, was consistent with the perpetuity of the nation is not denied. Nor is it claimed that all who now are being drawn after its delusive light desire or fear the same fearful yet unavoidable consequences of its acceptance; but that it precipitated Jefferson and the Legislatures of Virginia and Kentucky into the antagonistic resolutions of 1798, Calhoun and South Carolina into a treasonable nullification, Davis, the South, the democratic party into the overt, armed attack upon and attempted destruction of the Republic, at once the most atrocious and world-abhorred rebellion, is history.

That war so much deplored, so lamented, so thrilling in its horrors, so exasperating in its review, was the assertion of State independence as against the national supremacy. The perpetuation of slavery was a motive. The defense against dreaded abolition was a motive. The ambitious desire to ingraft family aristocracies upon society, of lineal ranks, as against the spirit of plebeian equality was a motive. But this was the principle, the doctrine. To prove this beyond dispute, take the extreme friends of the doctrine and defenders of rebellion, whose testimony is against interest. The author of the life of Jefferson Davis, (Alfriend,) in stating the democratic views, says, page 26:

> The advocates of States' rights regard the Union as a compact between the States—something more than a mere league formed for purposes of national safety. But still a strictly voluntary association of sovereignties, in which certain general powers were specifically delegated to the Union, and all others not so delegated were reserved by the States in their separate character.

The same biographer states the national view as follows:

> A majority of the northern people embrace the idea of a perpetual union, whose authority was supreme over all the States and regulated by the will of a numerical majority, which majority, it should be observed, they had already secured, and were yearly increasing in an enormous ratio. The South, in the course of years, with even more unanimity, cling to the idea of State sovereignty and the interpretation of the Government as one of limited powers as its shield and bulwark against the northern majority in the collision which it was foreseen the aggressive spirit of the latter would eventually occasion.

These quotations present the conflict of ideas and doctrines at least not unfairly to the other side. This issue was very clearly defined in the preambles of the Constitution of the United States and the one framed by the rebellion. It is but natural that here they should lay down the great thought of that rebellion in language different from that to which they took exception. The Constitution of the United States reads emphatically and unmistakably:

> We, the people of the United States, in order to form a more perfect union, &c.

The constitution of the "provisional government of the Confederate States of America," made February 8, 1861, reads:

> We, the deputies of the sovereign and independent States, * * * in behalf of these States, &c.

And the constitution of the "Confederate States of America" reads:

> We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, &c.

It is plain that as an opposition to the Constitution of the United States or else as an alleged constitutional interpretation of the Constitution of the United States the claim set up and fought for by the armies of rebellion was that this Union is a compact of sovereign States voluntarily continuing in association, each reserving to herself the control, protection, and primal allegiance of her citizens; while the nation resisted upon the great principle that this is a nation supreme over all its people in every State; a consolidated Union in the peace and dignity of which every citizen is securely to be protected and to which he owes his first allegiance.

There is a convincing force in the words of the constitution of the Confederate States quoted. Its obvious change from the old Constitution of our fathers is a solemn confession of a want of confidence in that instrument as sustaining these opposers of it. This is confirmed by the claim made that it was but an interpretation of that Constitution. The declaration there solemnly made in the fundamental instrument written and adopted as the makers of it went forth to the awful guilt of rebellion against free government is the herald of that for which in all its fratricidal fury, from Sumter to Appomattox, against the floating emblem of the old Constitution, they fought.

The biographer of Davis, already quoted from, on page 236 says of this change:

> This, it was claimed, was not an alteration of the old Constitution, but merely a formal interpretation of its obvious purpose.

It was a theory of interpretation of the Constitution as to the relation of the States to the Union and the supremacy of the nation over all the land. This was the subject of controversy. Suppose the armies of the rebellion had triumphed, would not this theory have been adopted? Their success was the success of this idea.

In his inaugural, Jefferson Davis said:

> With a constitution differing only from that of our fathers in so far as it is explanatory of their well-known intent, * * * it is not unreasonable to expect

that States from which we have recently parted may seek to unite their fortunes with ours under the government which we have instituted.

All that was necessary to the ingrafting of this interpretation upon the old Constitution was the success of the rebellion and uniting of the other States with the confederacy under their constitution. Imagine the independence of the confederacy acknowledged and the States left in the Union one by one and seeking admission under that constitution until all were again united to it, then the doctrine of State rights would have become the supreme law of the land.

This was success of the rebellion; what, then, was its defeat?

The effect of national success is well stated by the southern historian. Summing up the result of the informal conference between STEPHENS, Hunter, and Campbell, and Lincoln and Seward, at Hampton Roads—

The result—

Says he—

was simply the assertion, in a more arrogant form, of the Federal *ultimatum*—the unconditional submission of the South, its acquiescence in all the unconstitutional legislation of the Federal Congress respecting slavery, including emancipation and the *right to legislate upon the subject of the relations* between the white and black *populations of each State*.

Or, as Jefferson Davis stated in his letter to Governor VANCE, of North Carolina, in 1864:

If we will break up our government, dissolve the confederacy, disband our armies, emancipate our slaves, take an oath of allegiance binding ourselves to obedience to him (Lincoln) *and of disloyalty to our States*, he proposes to pardon us, &c.

Who, in the face of these historical facts, will deny that the war was a collision between the assertion of the independent sovereignty of the State and its exclusive jurisdiction over the citizen and right to his first allegiance and its correlative, his first protection, and the counter assertion of the supremacy of the nation over all the national domain to enforce its laws, execute its processes, maintain its army and navy, keep its peace and protect its people.

By the terms of its successful close, the conditions precedent to the extended pardon, the parole, and amnesty, were the unconditional acceptance of the national theory of constitutional interpretation as against the State-rights theory, the so-called "disloyalty to States," the right to legislate as to the relations of the people of each State, the supremacy of the nation as the object of the allegiance of the people and the protector of their republican liberties. The constitution of the confederacy went down. The false, State-rights interpretation of the old Constitution, upon which alone it was based, went down with it. That decision ought to be final.

It was the part of patriots of all sections, parties, and opinions to let our differences of opinion be forever settled by the judgment of war. Whoever would rekindle the strife is to his country's peace a foe. That which was borne on patriotic hands through the storms of shot and shell to the great trial of arms, that decision obtained at the inestimable cost of blood, should stand, be respected, and accepted infinitely above the opinions of the Supreme Court of the nation. To renew the issue, reopen the conflict, is a breach of faith, a violation of honor, a sacrifice of patriotism unworthy of man. The crime of rebellion, deep, dark, damnable as it is, pales to an excusable offense before the arch-felony of this. The success of the Union arms carries with it the opposite of all that would have been attained by the success of rebel arms. It was an unconditional success. There was no compromise.

The question of the relation of States to the Union is now settled by the same decision as has secured our separation from Great Britain. To open that issue and disturb our peace with it is as unpatriotic as it would be to reopen the issue of the revolutionary war and claim the colonial relation of this country to England. The relation of the colonies to the mother country was forever settled by the one; the relation of the States, in constitutional construction, to the Government of the United States, was forever settled by the other. It was not only a settlement of fact, but also of principle. Both are finalities in the history of this country.

The error of State rights originated in the theory of the existence of sovereign States prior to the Union. However true in fact, such a theory is utterly false. All the States are equal, and stand on an equal footing. Three-fourths of these States have been territory of the United States, and were granted the State government under the Constitution, by act of the nation. And in the eye of the Constitution every State did the same. There are no such things in law, in constitutional interpretation, as original States. That stand-point is erroneous, false, and deceptive, and leads to fallacies. In theory, the people of the United States first, in convention, formed the Constitution of the United States, then ratified it in conventions of the people. Then, under that National Government, organized themselves into States, formed constitutions, applied for admission as States under and as a part of the Union, out of territory absolutely possessed by the United States, and under constitutional grants of the people to the nation, were, with the approval of the national Congress, made States for local, municipal, domestic government, subordinate ever to sovereignty of the United States in the exercise of all the national powers granted to it. As citizens of the nation, inhabiting its territory, we had the right, under constitutional conditions, to organize States and set in motion such local and subordinate governments, and become thereupon citizens also of a State. But we were citizens first of the United States, and secondly of the State. And we created the State under the powers which we held as citizens of the United States, under the Constitution of our making for that National Government.

The overlapping supremacy of the senior creature of the citizen—the Union—in the exercise of all its supreme powers, in the eyes of which no State, county, nor municipal lines exist, except for convenient designation in terms of laws, finds no antagonism in the system. This is the theory of Government determined by the war. When gentlemen demand a decision of the Supreme Court sustaining these powers and relations, the answer is found in the judgment of the war. In the undisturbed settlement of that issue there is permanent peace, the broadest amnesty, and the fullest conciliation. Had this submission been manifest from the close of the conflict, this would have been a happy, fraternal, and prosperous people to-day. The sunny South and snowy North would with clasped hands watched over the new era of national prosperity; and their commingling, coworking and contented people, forgetting the regretful past in the abundant anticipations of the future, would not be disturbed in the peaceful present by the returning spirit of revolution. But what a contrary spirit has been manifested! To the sin of rebellion, in the very hour of forgiveness, has been added the sin of a renewal of the war issue of State rights.

The distinguished gentleman from New York [Mr. COX] the other day, in his speech on oaths, in referring to the herald of the Olympic games announcing the clemency of Rome to the conquered, who had been subjected to long privations by the conqueror—which reference was doubtless for our instruction—quotes from the historian that the Greeks, "when the herald announced such unexpected deliverance, wept for joy at the grace which had been bestowed." In the light of such gratitude what would we expect of those who had forfeited all and held life even as a gift of grace? From the stacked arms of war rank and file rode home. Pardon, amnesty, enfranchisement hastened to embrace them. The terms—the abandonment of State rights to the defeat it has sustained. In the enjoyment of pardon, who is willing to invoke the infamy of casting down again the gage of State sovereignty?

In violation of all the sacred claims of the verdict of war, of gratitude, and of patriotic considerations of the evils once by it entailed upon the land, the democratic party has, from the moment of assured safety from the guilt of rebellion, renewed the conflict, fanned the flames of hate, and endangered our peace by the constant and systematic agitation of the war issue of State rights.

While the nation was settling into a dream of peace the seed was sown, the plot laid, and the fearful, calamitous, and distracting execution begun, which now hisses into the ears of the people, the same lost issue of State supremacy—a doctrine which is responsible for the blood of our soldiers; responsible for the incalculable destruction of the strength and vitality of the Republic; responsible for the sacrifice of property, the devastation and suffering; responsible for the national debt; responsible for the acts recited of wrong and suffering from 1861 up to this very hour. And yet men rise in their seats to inveigh against the evils and in the same breath invoke again the cause.

That awful rebellion, upheaving our institutions, could not spring up in a season nor die out in a day. The intense and bitter strife closing at Appomattox, the provisional military governments, the slow return to republican form of government, the first restoration of those States to self-constituted civil government, of which they had deprived themselves in rebellion—the period termed offensively carpet-bag government—all were but phases of war, of insurrection. They were the inevitable succession of rebellion, the necessary effect of the action of the people of those States. The evils of these stages, and they were legion, the abuses, and they were many, were not the crimes of the Government or of the party administering it, but the consequences of the acts of the insurrectionary States. They were not enactments of law, but the accidents of states of society. They bore the same relation to the wise and necessary acts of reconstruction on the part of the Government of the United States that railway accidents bear to the wise and careful system of railway operation and commerce.

And up to this hour, Mr. Speaker, the tramp of lawless organizations, the carrying of concealed weapons, the repeated outrages, fleeing and famished black men, are to the intelligent mind but the dying signs, the subdued sounds, the mournful marks of the madness and folly of the war for State rights.

Sir, in proof of the designs of the democratic party, this day made manifest to all, I first cite the testimony of the distinguished gentleman from Georgia [Mr. STEPHENS] who was vice-president of the organized rebellion, and who is to-day the Richelieu of democracy. Page 159, report of Joint Committee on Reconstruction, first session Thirty-ninth Congress:

Question. What are their present views concerning the justice of the rebellion? Do they at present believe that it was a reasonable and proper undertaking or otherwise?

Answer. My opinion of the sentiment of the people of Georgia upon that subject is that the exercise of the right of secession was resorted to by them from a desire to render their liberties and institutions more secure, and a belief on their part that this was absolutely necessary for that object. They were divided upon the question of the policy of their measure. There was, however, but very little division among them upon the question of the right of it. It is more their belief, in my opinion—and I give it merely as an opinion—that the surest, if not only hope for their liberties is the restoration of the Constitution of the United States and of the Government of the United States under the Constitution.

Q. Has there been any change of opinion as to the right of secession as a right in the people or in the States?

A. I think there has been a very decided change of opinion as to the policy by those who favored it. I think the people generally are satisfied sufficiently with the experiment never to make a resort to that measure of redress again by force, whatever may be their own abstract ideas upon that subject. They have given up all idea of the maintenance of these opinions by a resort to force. They have come to the conclusion that it is better to appeal to the forum of reason and justice, to the halls of legislation and the courts, for the preservation of the principles of constitutional liberty, than to the arena of arms. It is my settled conviction that there is not any idea cherished at all in the public mind of Georgia of ever resorting again to secession or to the exercise of secession by force. That whole policy of the maintenance of their right, in my opinion, is at this time totally abandoned.

These words demand a careful study, analysis, and a lasting remembrance. Three things are, in my opinion, clear from them:

First. The right of secession is reserved, and the intention to exercise that right *by force* is alone disclaimed.

Second. The resort to force being disclaimed, the "better appeal to the halls of legislation" is essential.

Third. The appeal is to be made for a *restoration* of the Constitution of the United States and for the same "liberties" for which a resort was made to the arena of arms.

The words are given, and their true interpretation in the light of these succeeding years of history and up to this Congress I leave to their readers.

Again the same distinguished leader of the democracy, in an address to his comrades at the close of the war, said:

Comrades, we staked our all on the gage of battle and we lost. Now our only plan must be to regain in the halls of legislation what we lost on our tented fields.

In the light of subsequent history, in which that sagacious and experienced gentleman has led the advance in the halls of legislation, and in the light of the "gage of battle" cast at the feet of the people of the country by the gentleman from Mississippi [Mr. CHALMERS] and the gentleman from Kentucky, [Mr. BLACKBURN,] how prophetic of conflict are these authoritative words!

The first step in this conflict between these States and the Government was a demand for places in legislative halls. A joint committee of Congress was appointed in 1865 to inquire into the condition of affairs in the States in rebellion, which committee reported in 1866. I quote from that report, page 16:

Hardly is the war closed before the people of these insurrectionary States come forward and haughtily claim as a right the privilege of participating at once in that Government which they had for four years been fighting to overthrow. Allured and encouraged by the Executive to organize State governments, they at once place in power leading rebels, unrepentant and unpardoned, excluding with contempt those who had manifested an attachment to the Union, and preferring in many instances those who had rendered themselves the most obnoxious. In the face of the law requiring an oath which would necessarily exclude all such men from Federal offices, they elect, with very few exceptions, as Senators and Representatives in Congress, men who had actively participated in the rebellion, insultingly denouncing the law as unconstitutional. It is only necessary to instance the election to the Senate of the vice-president of the confederacy, a man who, against his own declared convictions, had lent all the weight of his acknowledged ability and of his influence as a prominent public man to the cause of the rebellion, and who, unpardoned rebel as he is, with that oath staring him in the face, had the assurance to lay his credentials on the table of the Senate. Other rebels of scarcely less note or notoriety were selected from other quarters. Professing no repentance, glorying apparently in the crime they had committed, avowing still, as the uncontradicted testimony of Mr. STEPHENS and many others proves, an adherence to the pernicious doctrine of secession; and declaring they yielded only to necessity, they insist with unanimous voice upon their rights as States, and proclaim that they will submit to no conditions whatever as preliminary to their resumption of power under that Constitution which they still claim the right to repudiate.

And again I quote from the report, page 19:

First. The seats of the Senators and Representatives from the so-called Confederate States became vacant in the year 1861, during the second session of the Thirty-sixth Congress, by the voluntary withdrawal of their incumbents with the sanction and by the direction of the legislature or conventions of their respective States. This was done as a hostile act against the Constitution and Government of the United States, with a declared intent to overthrow the same by forming a southern confederation. This act of decided hostility was speedily followed by an organization of the same States into a confederacy, which levied and waged war by sea and land against the United States. This war continued more than four years, within which period the rebel armies besieged the national capital, invaded the loyal States, burned their towns and cities, robbed their citizens, destroyed more than two hundred and fifty thousand loyal soldiers, and imposed an increased national burden of not less than $3,500,000,000, of which seven or eight hundred millions have already been met and paid. From the time these Confederate States thus withdrew their representation in Congress and levied war against the United States, the great mass of their people became and were insurgents, rebels, traitors, and all of them assumed and occupied the political, legal, and practical relation of enemies of the United States. This position is established by acts of Congress and judicial decisions, and is recognized repeatedly by the President in public proclamations, documents, and speeches.

Second. The States thus confederated prosecuted their war against the United States to final arbitrament, and did not cease until their armies were captured, their military power destroyed, their civil officers, State and confederate, taken prisoners or put to flight, every vestige of State and confederate government obliterated, their territory overrun and occupied by the Federal armies, and their people reduced to the condition of enemies conquered in war, entitled only by public law to such rights, privileges, and conditions as might be vouchsafed by the conqueror. This position is also established by judicial decisions and is recognized by the Presidents in public proclamations, documents, and speeches.

Third. Having voluntarily deprived themselves, by the act of levying war, to the condition of public enemies, they have no right to complain of temporary exclusion from Congress; but, on the contrary, having voluntarily renounced the right of representation and disqualified themselves by crime from participating in the Government, the burden now rests upon them, before claiming to be reinstated in their former condition, to show that they are qualified to resume Federal relations. In order to do this, they must prove that they have established, with the consent of the people, republican forms of government in harmony with the Constitution and laws of the United States, that all hostile purposes have ceased, and should give adequate guarantees against future treason and rebellion—guarantees which shall prove satisfactory to the Government against which they rebelled and by whose arms they were subdued.

Fourth. Having by this treasonable withdrawal from Congress and by flagrant rebellion and war forfeited all civil and political rights and privileges under the Federal Constitution, they can only be restored thereto by the permission and authority of that constitutional power against which they rebelled and by which they were subdued.

Fifth. These rebellious enemies were conquered by the people of the United States, acting through the co-ordinate branches of the Government, and not by the executive department alone. The powers of the conquerors are not so vested in the President that he can fix and regulate the terms of settlement, and confer congressional representation on conquered rebels and traitors. Nor can he, in any way, qualify enemies of the Government to exercise its law-making power. The authority to restore rebels to political power in the Federal Government can be exercised only with the concurrence of all the departments in which political power is vested; and hence the several proclamations of the President to the people of the Confederate States cannot be considered as extending beyond the purposes declared, and can only be regarded as provisional permission by the Commander-in-Chief of the Army to do certain acts, the effect and validity whereof is to be determined by the constitutional government, and not solely by the executive power.

Sixth. The question before Congress is, then, whether conquered enemies have the right, and shall be permitted at their own pleasure and in their own terms, to participate in making laws for their conquerors; *whether conquered rebels may change their theater of operations from the battle-field, where they were defeated and overthrown, to the Halls of Congress, and through their Representatives seize upon the Government which they fought to destroy*; whether the National Treasury, the Army of the nation, its Navy, its forts and arsenals, its whole civil administration, its credit, its pensioners, its widows and orphans of those who perished in the war, the public honor, peace, and safety shall all be turned over to the keeping of its recent enemies without delay and without imposing such conditions as, in the opinion of Congress, the security of the country and its institutions may demand.

Seventh. The history of mankind exhibits no example of such madness and folly. The instinct of self-preservation protests against it. The surrender by Grant to Lee and by Sherman to Johnston would have been disasters of less magnitude, for new armies could have been raised, new battles fought, and the Government saved. The anti-coercive policy which, under pretext of avoiding bloodshed, allowed the rebellion to take form and gather force, would be surpassed in infamy by the matchless wickedness that would now surrender the Halls of Congress to those so recently in rebellion until proper precautions shall have been taken to secure the national faith and the national safety.

Mr. Speaker, that matchless wickedness, in spite of the precautions taken, has been accomplished, and these sacred subjects of legislative control have been seized by the resting forces of the secession army; but it was under protestations of loyalty and under conditions which were in good faith supposed to deny and guard against the issue of war.

Major-General George H. Thomas before that committee testified, from intelligence received from reliable sources as commander of forces in the military districts of Tennessee, Kentucky, Georgia, Alabama, and Mississippi, that "he did not think the rebels would attempt an outbreak on their own account again, but there was a disposition to embarrass the Government in its administration and gain as many advantages for themselves as possible; that they had not given up their desire for a separate government." (Page 111.)

Judge John C. Underwood then testified, page 8, (Virginia:)

I believe their present design is to attempt to accomplish their purpose through the ballot-box. * * * I think it is their expectation that there will be some split in the Union party, which will enable them, in concert with the democratic party of the North, to succeed by voting better than by fighting.

Lewis McKensie testified before that committee, page 14, (Virginia:)

They expect to take possession of the Government of the United States. They are constantly influenced by the hope that their disloyal members will get into Congress, and they expect to form a coalition with the northern democrats and copperheads. They have no love for the Government of the United States. They will give the Government trouble some of these days.

George S. Smith testified, page 14, (Virginia:)

Question. What are the schemes which that class (representative men) of the southern people now have in view?

Answer. To overthrow the General Government and to repudiate the national debt.

Q. * * * What are the means by which they propose to accomplish it?

A. By political combinations. I talked with a great many of the leading politicians, and they say they want to try to accomplish by strategem what they failed to accomplish by war.

J. J. Henshaw sworn, said, page 36, (Virginia:)

I do not think that they consider that their State rights or anything of that sort have been impugned. They have been overpowered, but they were right nevertheless. What they claimed and what they struck for they were entitled to, and are entitled to yet.

Rev. Dr. Robert McMurdy testified, page 95:

Their struggle now is to preserve as much of the respectability of secession as they can, and they will do it in every way they can without bringing themselves into conflict with the Government.

They do not profess conversion to the principles and cause of the Federal Government. They do not profess to be sorry for their course in the war. They regret that they did not succeed. They submit to the laws as far as is necessary, and mean to have these laws as palatable as possible to them.

All they can effect politically, socially, and ecclesiastically they will. They have no more use for bullets. They henceforth use the social, the ecclesiastical, and the political ballot.

It is useless to multiply quotations of sworn testimony of men who testify thus against interest and influence. It is enough to cite the large preponderance of such evidence found in the Report of the Joint Committee on Reconstruction of 1866, a volume of six hundred pages, full of the unwelcome truth.

In 1868 the volume from which I have quoted already—The Life of Jefferson Davis, by Frank H. Alfriend, late editor of the Southern Literary Messenger—was published. Being a later and quasi-authoritative enunciation of southern sentiment, I quote again from page 210:

He (Davis) was always purposed to follow the principles of States' rights to their

logical consequences, and yet was consistent in his attachment to the Union. Thus he was a firm believer in the absolute sovereignty of the States, and of the enjoyment, by the States, of all the attributes of sovereignty, including, necessarily, the right of secession.

Page 327 (speech of Davis on withdrawing from the United States Senate, January 21, 1861) he says:

The laws are to be executed over the United States, and upon the people of the United States * * * but there are no laws of the United States to be executed within the limits of a seceded State.

How strikingly similar, and yet how much better, is that expression, bad as it is, to the one uttered upon this floor in these debates, that the United States has no peace to keep, or citizens to protect, or ballot to defend within a sovereign State!

And in these Halls what is the subject of controversy pushed upon the people except the single one of State rights. Every sacred duty of legislation is prostituted to be an engine of the war upon the nation. When the people's money lies in the Treasury to be appropriated, every act is made the highwayman's weapon to coerce a grant to the success of the old war issue. The Army is halted in its march with the challenge, "Your allegiance to the confederate cause or your life!" The President and legislative branches are stopped with the same brigand boast. Even the judiciary, ever to be independent, is challenged on the bench, and asked, as the price of life, to bow to the mandate of this ghost of the lost cause. And now, at last, foiled and backing out, with shaking fists and threats of future return, the war is to be closed by refusing to the marshals of the United States, the executive officers of the Government, the hand of the judges to enforce laws, hold courts, execute judgments and decrees, the pay provided by law unless the lost cause of State supremacy be acknowledged.

All this expense of an extra session and all this public uneasiness, all this ignoring of the decisions of war is deliberately incurred for the sake of recovering in legislative halls that which was lost upon the tented field. Lincoln placed the call of seventy-five thousand troops upon the ground of a *posse comitatus* to suppress combinations, and the lost cause, in its return to power, directed the fury of its attack to that, and disarmed the Government of the power to use the Army as a *comitatus*. Emboldened by that success, they dash on to greater victories.

In summing up it appears—

First. That the State-rights interpretation of the Constitution was the issue of war.

Second. That, unless that war was in vain, that doctrine was by it forever disposed of as untenable.

Third. That the democratic party has outraged every just consideration and dragged forth again the bitterness of war by renewing the fight for this principle of the "lost cause."

Fourth. That its success is attempted through every violent and unconstitutional means except open war.

The great overwhelming danger to the country lies kerneled in it for all our future, and calls upon all men of all parties now to destroy it and rebuke the unpatriotic violators of peace and honor who have thrust it upon the people.

Immediately after the war, in 1867 or 1868, the cause of the confederacy was revived by the organization of the "Ku Klux Klan," including "The White Brotherhood," "The Constitutional Union Guards," and "The Invisible Empire." The spirit of these secret organizations was support of the rebellion and opposition to all who were true to the United States. They were largely soldiers of the rebel army, opposed to all "holding radical views or opinions." The organization, action, crimes, and inhumanities of these societies, recorded in the reports of committees in 1871 and 1872, need no rehearsal now. It constitutes the dark age between the close of rebellion and the accession of its participants to power in these States. And then began the more gigantic effort to capture the field of future struggles to regain that which had been lost—the halls of national legislation.

The last sentence in the Life of Davis, just quoted from, is this:

Time will show, however, the amount of truth in the prophecy of Jefferson Davis made in reply to the remark that the cause of the confederacy was lost: "*It appears so.* But the principle for which we contended is bound to reassert itself, though it may be at another time and in another form."

The time has come. The form is little changed. The judgment of war is defied. The truce of pardon is scorned. The fatal doctrine is announced. Defiance is shouted, and the people of the nation again summoned to her defense, at the ballot-box and in these halls.

No people are more strongly opposed to this than the northern people. In the quiet of the long winter they learn to love repose and peace about the endeared fireside; and it is an offense to them to force the agitation of vexing evils upon their serene content. They believe in statutes of repose; in a settlement of matters in dispute; in an end of controversy. This sentiment fills the bosom of that people, and wells up in their hearts in sighs of anticipation. And often the wish is expressed that the issue of the war of rebellion, with all the passions, prejudices, sectionalisms, dissensions, and hates which cluster around it may be settled, covered up, and forever—

In the deep bosom of the ocean buried,

no more in the great future to haunt our peace. That for which we fought should be settled by the result. Claims were made the subject of war, principles were contended for. Let them be established or defeated by the surrender. The supporters of that rebellion took their claims to the court of last resort, the supreme tribunal of civil war, and judgment was rendered against them. That ends it; and whatever the subject of that contest was, the dictates of honor and chivalry, of every principle of right, and of every instinct of true manhood, and of decency, self-respect, and patriotism, demands a ready, cheerful, and final acceptance of the verdict.

And this is the sentiment of the rank and file of the contending armies. The baseness of a reassertion of the doctrines contended for and lost will be execrated by all noble men. The party which attempts it will stand accursed. The cause which surrendered at Appomattox, and was paroled never to again arise, must not return with the defiance of Catiline:

I go, but I return. * * *
This day's the birth of sorrow! This hour's work
Will breed proscription! Look to your hearths, my lords,
For there henceforth shall sit for household gods
Shapes hot from Tartarus! All shames and crimes;
Wan Treachery, with his thirsty dagger drawn;
Suspicion, poisoning his brother's cup;
Naked Rebellion, with the torch and ax,
Making his wild sport of your blazing thrones,
Till Anarchy comes down on you like night,
And Massacre seals Rome's eternal grave!

Shall the future witness the same conflicts with renewed force, returning each generation, scattering discord and threatening the existence of these sacred institutions? They have cost us too much for that. They have shown upon the distant lands the invigorating longings for liberty too long for that. They enshrine too many of the holy oracles of freedom, which we all want to transmit to our children, for that.

Shall we bequeath to our flesh and blood a legacy of conflict and sorrow?

Standing here in the presence of Washington, under the flag, in sight of the battle-fields of the Potomac and the dead on Arlington, amid the monuments of that greatest human struggle for national life; with the memories of those dark years pouring in upon my soul, with its unspeakable human griefs, struggling within me for utterance, I answer for the people of all sections, Never! It shall never be. In our might we will rise and put the party which renews it down.

Legislative, etc., Appropriation Bill.

SPEECH OF HON. C. G. WILLIAMS,

OF WISCONSIN,

IN THE HOUSE OF REPRESENTATIVES,

Monday, June 23, 1879,

On the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes.

Mr. WILLIAMS, of Wisconsin. Mr. Speaker, after my remarks on the legislative, executive, and judicial appropriation bill, delivered on April 24, appeared in the RECORD, the honorable gentleman from South Carolina [Mr. RICHARDSON] announced in the House that he should take the first fitting opportunity to review some portion of them. Not being present at the time, and at that time not being aware that the honorable gentleman had referred to me in his speech, also delivered April 24, I withheld any reference to the matter until such time as the honorable gentleman should review my remarks, as announced. Some weeks elapsed, I think, when happening to meet him he very kindly informed me that what he referred to was some jumbling up of the testimony by which the evidence of democrats and republicans had been interchanged. And on being informed that that occurred at the Public Printing Office, and had been corrected the next morning for the permanent RECORD, he intimated that he should probably not allude to the matter in the House. This being so, I take the present method of referring to one clause in the honorable gentleman's speech which I feel should not go unnoticed. And I do it not with any view to controversy, but to get myself, and perhaps others on this side the Chamber aright, and which would have been done before but for the delay occasioned, as I have stated.

I find the following in the honorable gentleman's speech of April 24:

The honorable member from Wisconsin, [Mr. WILLIAMS,] in his speech on the bill to make appropriations for the support of the Army, speaking of the election at Kingstree, in South Carolina, uses this language:

"I tell you that right then and there the United States was made to eat the leek and to taste garlic, and from that time on and to the wee small hours of the morning onion-skin ballots went in unchallenged, but not uncounted."

Now, Mr. Chairman, that was a wholly unwarranted and unsupported assertion, which has its foundation for truth only in the imagination of the honorable member. There is not one word in all the evidence taken by the Teller committee, not a word in the testimony of the supervisor of election referred to, or in that of any of the rabid partisan republican negroes who were examined in reference to the election at Kingstree or in the entire county of Williamsburgh, which justifies the statement of the honorable member. None of them assert that a single "onion-skin" or tissue ballot was cast or counted at Kingstree or in the entire county of Williamsburgh, and the fact is that not one was cast or counted there or in that entire county. This only shows out of what whole cloth such statements are made and

paraded before the public for political purposes by our republican friends on the other side of this House.

Now, Mr. Speaker, while that statement is a grave one, and, if true, ought to subject myself and other gentlemen on this side the Chamber to severe censure, because if we make statements and send them out to the country utterly destitute of truth we are certainly demonstrating one thing, and that is our utter unworthiness to occupy seats on this floor. But it is always better to meet such charges as these with facts rather than with any ebullition of passion. And let us see if we can. The charge is that there is "not one word in the testimony," not even of the solid republican negroes, to justify the above statement. I did not hear the speech of the honorable gentleman at the time of its delivery, and did not know for days afterward that this passage was in it. In fact I believe the whole speech was not delivered in the House, and I do not know whether this portion of it was or not.

Now, if my friend takes position behind the literal term "onion skin" or "tissue ballots," I do not know whether they were used in Williamsburgh County or not. In fact I do not know just what the onion crop of South Carolina was in 1878, or whether there would have been enough to have gone around; but the term "onion skin" or "tissue ballots" has obtained a generic and well-defined meaning synonymous with the "stuffing" of ballot-boxes. In the sense I used it there was not only evidence to base it upon but to demonstrate its absolute truth.

Rev. John H. Pendergast was a witness before the Teller committee and as to the election at Kingstree, and testifies as follows, (page 417:)

Late in the afternoon they kept saying what they were going to do, what would become of us, and that we would "catch it" before sundown. I told them I would discharge my duty to the best of my ability, and about six o'clock, as near as I can remember, in the evening, as the train came up, then we heard great hollering and shouting at the depot, and I came down the court-house steps and went down on the street, and saw a great crowd coming from the depot and there was a crowd standing on the bridge.

Question. Were they white men?

Answer. Yes, sir; and I saw Dr. Byrd. Some colored men were playing music on the bridge, and when these men came up they said, "Now, stop; not another damned word of it here; you have been ruling Kingstree long enough, and we rule it now." Some of the men stopped and got scared. Then they marched down and came by the court-house and hollered, "File left," and they filed left. I was in front of them. They marched up the steps, and as they got up there Mr. Hanna was sitting on a box, and they said, "Get away from here, God damn you; what business you got here?" And this man who spoke to Hanna looked to me and said, "You one of the United States marshals, eh?" I said, "Yes, sir; I was." He said, "God damn you, your time is out here," and I was told to get down. Dr. Byrd said, "Damn you, get down," and brought out his pistol, but I still would not move. Then another young man knocked me and struck me, and as I turned round a cooper struck me and knocked me down the steps. They had knocked Hanna down the steps bodily, and by that time they had jumped up on the box that Hanna had and commenced taking out the tickets. They run over the box and took out numbers of tickets, and said, "God damn it, now men vote; we put Graham's Cross-Roads through, and now we will put Kingstree through." I am certain that some of the men had two or three tickets and voted them at once. They just went right on voting and hollering.

Q. How many of those men were there?

A. I think there was about forty-five or fifty, more or less.

Q. Did Byrd vote for them?

A. Each man came in and he gave them out tickets, and said they had put Graham's Cross-Roads through, now we will put Kingstree through; and they commenced voting and voting, and after they got through a man run down and said to us, "You must get down or these men will hurt you."

S. S. Hanna, United States supervisor, testifies as follows:

As I was going to say, about half an hour before the polls were about to close that evening, about forty democrats came up to the polls and asked me what business I had there; I said I was United States supervisor, and my business is to supervise the election; they told me I had no business there; several pistols were drawn on me and I was driven away; Dr. Byrd, who was captain of the company, told me to leave the place; I came away, and after I came away and they had voted they came down, and there came very near being a collision there near the polls. I was not allowed to go back there any more. When the voting had got through, the managers sent word for me to come back up and help them canvas the votes; I asked if those men had taken the proper oath; I asked that because, before I left, they had commenced voting without any oath being administered; they had voted regardless of the oath or anything else. I went back up and helped canvas the votes. I asked the democratic managers—they were all democrats—what was the number of votes on the poll-list. I could not keep a list. I had asked the men as they came up to vote, or after they had voted, what their names were, so that I could put them down on the list, and come as near making a full list as I could; the colored men generally gave me their names; I think all of them did; the white men generally would not give me their names at all; they told me I had no business there, and had no right to keep any poll-list, therefore I had to do the best I could under this disadvantage. I saw before I was driven away that they had commenced stuffing the box.

Question. What did you see?

Answer. I saw men rushing right up and voting without taking any oath; nor was it required. I staid on the steps as long as I could see what was going on. They said they intended to carry that precinct no matter how folks voted.

Now, as a matter of good faith, allow me to refer to one other passage of the gentleman's speech, and see if all the absolute fairness and truth exist on that side the Chamber. He says:

No one can doubt this who witnessed the elections conducted under bayonet rule in the South in 1876, when the soldier, with drawn sword in hand, directed who should vote. Lest this astounding statement should be doubted, I quote from the uncontradicted testimony taken in the contested-election case of Tillman *vs.* Smalls. At page 576 Mr. T. I. Adams, testifying as to the voting in South Carolina in 1876 at box No. 2, known as the school-house box, makes the following sworn statement:

"Question. State, Mr. Adams, what you saw while standing in the school-house waiting to vote.

"Answer. I saw Lieutenant Hoyt jump in the window; from three to five soldiers followed him; he went up very near the box and drew his saber and had the soldiers fix their bayonets.

"Q. When he drew his sword was his attitude a threatening one?

"A. It was; it would have frightened a timid man, to say the least of it.

"Q. What did the soldiers do after they fixed their bayonets?

"A. They remained in that attitude until I left. I was there about thirty minutes. There was a company outside of the house in plain view of the building."

Mr. Abraham Jones, an aged and most respectable citizen, testifies, at page 595, as follows:

"Question. Have you not been a member of the Legislature, and have you not filled other offices in the county?

Answer. I was elected to the Legislature six times, and have held other offices ever since from the time I was twenty-one.

"Q. Did you vote; and, if you did, where did you vote?

"A. At Morrison's school-house that day.

"Q. How long did you remain there that day?

"A. I was there from two o'clock until nearly dark.

"Q. While you were there did you see any intimidation by the whites?

"A. No; I did not. I saw men with red shirts riding about the streets hallooing, but did not see any intimidation attempted by them.

"Q. Did you notice anything peculiar about the way the election was conducted? If so, state it fully.

"A. I saw the United States soldiers as a guard around the door outside and a crowd of voters outside pressing this guard, who kept them back with their guns, and an officer in command, with his sword drawn; and he would select with his sword by touching those who were to go in next to vote. As the colored man at the door would call out, 'Send in ten men,' the officer would again select by touching with his sword those to go, not taking them as they came, but selecting them from the crowd, sometimes reaching over to touch one behind another, and sometimes skipping two or three. I was selected from the crowd with another white man at the same time, and none dared go in but those who were so touched by this officer. When they had voted they were let out of a window."

It seems as though the gentleman should at least have given a portion of the cross-examination of his own witnesses. Let me supply it. Mr. Adams says, on cross-examination:

Question. You say Lieutenant Hoyt drew his sword in a threatening attitude. Did he make an effort to strike any one, or did he threaten any one?

Answer. He made no threats or any effort to strike; the threat was in the act of drawing his sword.

* * * * * * *

Q. You say that the drawing of his sword had the tendency to frighten a timid man. Do you know of your own knowledge that any man did become alarmed and leave the polls without voting?

A. I do not.

Q. When you reached box No. 2 were not the grounds in front of the entrance of the school-house, and both sides, densely crowded; and were there not a great many horsemen in the crowd?

A. There was a crowd in front of the house; not many on the sides. I think there was twenty or thirty horsemen in front of the house.

Q. Were not these men on horses standing as near the door as they could get?

A. I think so; they were, I think, struggling to get in to vote.

That is, they were backing their horses into the ballot-box, tail foremost!

Q. Did you not see during the day a great many white men riding up and down the streets that day, and was not their demeanor a very threatening one?

A. I saw quite a number of horsemen. I did not see anything threatening; they were boisterous and happy.

Mr. Jones, on cross-examination, testifies as follows:

Q. You say that the officer in pointing out ten men would sometimes skip some and take others. Did they skip white as well as black?

A. There were more black than white men, a great many more, but sometimes one and sometimes two white men would go in to make ten.

Q. In your opinion did this officer have any regard for either political party in his selecting the ten?

A. *I think not;* he seemed to skip those who seemed more anxious to go and select those who were more quiet.

Now let Lieutenant Hoyt tell the story—Senate report, page 354.

LIEUTENANT HOYT'S REPORT—WHITES ALL ARMED.

Lieutenant Hoyt says:

I was directed to take four men and go down to the polling-place to assist Deputy Marshal Beattie in forcing his way through the people who were crowded together there so that the voters could not gain admittance to the house to vote. I found, I should say, from thirty to fifty mounted men, all armed with revolvers in their hands, and some with clubs, drawn up in front of the entrance as closely as they could be, apparently to prevent the colored people from getting in to vote. By direction of the marshal, I took my men up to open the way so that they could go in to vote. I went inside the building through a window, used as an exit for the voters, and then out at the door, and opened the way from the door through these horsemen, so as to give the people a chance to come through. I had four men with me, and as we marched out I ordered the horsemen to give back, and they crowded their horses back so as to give way for the men to come out. I then posted sentinels to keep the way open. * * * At the time I went down to the house there were some men, who had voted, coming out. The way it was managed was to take ten in at a time and swear them, and then they would vote and come out to make room for more. They opened the door to admit some more, and the negroes in front tried to get up to the door through the white men, but they would not allow the negroes to do so; two or three did, however, get through between their horses, in some way, and came up on the platform. One of them was struck over the head by a club in the hands of a democrat, and knocked off from the platform. I then spoke to the marshal about the condition of affairs there, and asked him if there was not an officer of the polls who could make these people go back, so that the negroes could come in and vote, and Mr. Sheppard, who, I think, was supervisor of the polls, stepped out and told these mounted men to get back away from the door, so that the people could come up and vote. They paid no attention to what he said, and I heard the remarks made that they would not do so; that the damned niggers should not vote. Mr. Sheppard came back and said that he could do nothing with them. Then the deputy marshal asked me to clear the way through them. As regards arms among the white men that I saw around there in the immediate vicinity of the poll, they were armed with revolvers without an exception that I noticed; I noticed no exception.

At the time the way was opened some of their revolvers were in their belts and some were in their hands, apparently ready for use.

Lieutenant Hoyt remained at the polls until noon. In the mean time Major Kellogg went down to see the condition of affairs. He thus reports it. (Read Major Kellogg's statement, page 365. Mr. Beattie explains why voting was slow, page 357.)

When they got inside they would keep the men there for two hours. I just pulled my watch out, and they were interrogating a man for a half hour, and they

would keep them there for three-quarters of an hour, asking them all kinds of questions. They would ask, "Look here, have you ever stole a pig?" And the man said, "No;" and he would say, "I don't believe you; I believe you are a God damned thief." And they would ask them all such questions as that; and when he would go to vote he would say, "Wait; don't put it in there; wait till we are through with you." That was the supervisor; and the white men and democrats would come up and say, "Don't let that damned nigger vote; I don't think he is old enough. Open your mouth and let me see your teeth," and all such things as that; "Well, he looks as though he was old enough by his teeth; they are all broke out. I reckon he is old enough. Let him vote." They would consume the time that way.

GENERAL BUTLER PUBLICLY THANKS THE TROOPS FOR THEIR "COURTESY AND IMPARTIALITY!"

Major Kellogg says:

After the election was over, just after the polls closed, General M. C. BUTLER came around and requested permission from me to make a speech to my company. I told him I had no objection, although I had; yet I could not very well say so; so I said I had no objection, provided he would not say anything about politics; and he said certainly, that he wished simply to thank us; and I then called the company to attention, and he made us a little speech, in which he thanked us for the courtesy and the impartial manner in which we had performed our duty during the day.

Mr. Speaker, I have purposely cited the testimony of soldiers who were complimented by General BUTLER for their soldierly bearing and the impartial manner in which they had discharged their duties—soldiers whose honor and integrity are proverbial. Thus stands the record, and thus I leave it to vindicate or condemn whom it may.

Executive proceedings of the United States Senate from which the injunction of secrecy has been removed.

THE NORTH AMERICAN FISHERIES

ARRANGEMENTS WITH GREAT BRITAIN.

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
March 27, 1879.

Resolved, That the injunction of secrecy be removed from the resolution of the Senate of the 4th December last concerning a proposed termination of the customs and fisheries arrangements between the United States and Great Britain, together with the memoranda in relation to statistics of the fisheries of North America, prepared for Senator EDMUNDS in response to his request of December 31, 1878, with the remarks of Senator EDMUNDS thereon, and that the same be published in the CONGRESSIONAL RECORD.

[The remarks of Senator EDMUNDS have not been furnished for publication.]

IN THE SENATE OF THE UNITED STATES,
December 4, 1878.

Mr. EDMUNDS submitted the following resolution:

Resolved, That, in the judgment of the Senate, steps ought to be taken to provide for as early a termination of the fisheries and customs arrangements between the United States and Great Britain as possible, by negotiations with that government to that end.

Resolved, That a copy of the foregoing resolution be laid before the President of the United States.

Ordered to lie on the table and be printed in confidence for the use of the Senate.
January 27, 1879.

Ordered, That the above resolutions be referred to the Committee on Foreign Relations.
February 4, 1879.

Reported favorably.
February 27, 1879.

Considered, and agreed to unanimously.

Memoranda in relation to statistics of the fisheries of North America, prepared for Senator Edmunds, in response to his request of December 31, 1878.

First question.—"About what amount of duties would have been realized on Canadian importations of fish and oil since the fishery clause of the Washington treaty went into effect, had they paid duties under existing laws?"

1. A statement of the amount of mackerel imported from British North America, their value, and the amount of duty saved on them is first presented. The statement for each year ends with June 30, and this table begins with the first operations of the treaty of Washington, July 1, 1873.

Year.	Barrels.	Value.	Duty saved.
1874	89,376.75	$793,764 09	$178,753 50
1875	78,091.25	586,825 00	156,182 50
1876	76,582.85	695,847 00	153,165 70
1877	44,169.51	373,792 38	88,339 00
1878	101,995.00	907,013 00	203,990 00
Total	390,215.36	3,357,241 38	780,430 70

2. The total value and amount of the fish and oil imported from British North America, and the amount of duty saved, will now be shown, first in detail for each kind of article, and finally in summary table.

The rates of duty upon which the estimates are based are those which were in use at the time of the establishment of the treaty, and are as follows:

Mackerel, per barrel	$2 00
Salmon, per barrel	3 00
Herring, per barrel	1 00
Other pickled fish, per barrel	1 50
Dried and smoked fish, per pound	½ cent.
Fish oil, ad valorem	20 per cent.

The detailed table for mackerel has already been presented.

The imports of salmon, pickled, in barrels, are as follows:

Year.	Barrels.	Value.	Duty saved.
1874	3,674.75	$50,073 00	$11,024 25
1875	4,730.25	61,583 00	14,190 75
1876	4,197.00	49,938 00	12,591 00
1877	5,437.00	61,724 00	16,311 00
1878	8,423.00	107,399 00	25,269 00
	26,462.00	330,717 00	79,386 00

The imports of herring, pickled, in barrels, are as follows:

Year.	Barrels.	Value.	Duty saved.
1874	53,501.25	$191,492 23	$53,501 25
1875	77,917.75	300,406 03	77,917 75
1876	89,042.00	306,947 38	89,042 00
1877	61,791.50	207,080 55	61,791 50
1878	79,701.50	250,920 45	79,701 50
	361,954.00	1,256,856 64	361,954 00

The imports of other fish, pickled, in barrels, are as follows:

Year.	Barrels.	Value.	Duty saved.
1874	8,719.00	$47,466 25	$13,078 50
1875	8,694.50	56,172 00	13,041 75
1876	8,243.00	50,374 00	12,364 50
1877	16,004.25	90,796 00	24,006 38
1878	4,974.62	38,520 00	7,461 93
	46,635.37	283,328 25	69,953 06

The imports of salmon, dried or smoked, in pounds, are as follows:

Year.	Pounds.	Value.	Duty saved.
1874	*(31,928.03)	$4,703 00	*($159 64)
1875	58,096.50	8,560 00	290 48
1876	9,240.00	970 00	46 20
1877	37,069.00	3,704 00	185 34
1878	9,354.00	1,082 00	46 77
	145,687.53	19,019 00	728 43

The imports of dried and smoked herring, packed in boxes, are as follows, the contents of each box being estimated at seven pounds:

Year.	Boxes.	Value.	Duty saved.
1874	205,819.00	$34,669 54	$7,203 66
1875	309,549.00	63,223 45	10,834 22
1876	307,100.00	57,560 40	10,751 65
1877	316,570.50	39,459 42	11,079 96
1878	421,834.00	52,715 16	14,764 19
	1,560,962.50	247,628 02	54,633 68

The imports of other fish, smoked and dried, in pounds, are as follows:

Year.	Pounds.	Value.	Duty saved.
1874	6,104,890	$152,577 94	$30,524 45
1875	7,747,452	241,055 00	38,737 26
1876	6,360,736	210,130 94	31,803 68
1877	5,661,597	229,730 00	28,307 98
1878	10,294,661	305,007 25	51,470 31
	36,168,736	1,138,501 13	180,853 68

The imports of whale and other fish oil, in gallons, are as follows:

Year.	Gallons.	Value.	Duty saved.
1874	165,448	$91,944 00	$19,388 80
1875	250,625	147,485 00	29,497 00
1876	103,184	62,438 00	12,487 60
1877	138,708	84,088 00	16,817 60
1878	310,854	176,384 00	35,276 80
	968,819	562,339 00	112,467 80

* The number of pounds not being given in the report of the Bureau of Statistics, an estimate has been made from the statement of value on the basis of the returns for the following year.

The total amount of duties saved for a period of five years, beginning July 1, 1873, and ending June 30, 1878, is given in the following table:

Article.	Value.	Duty saved.
Mackerel, pickled	$3,357,241 38	$780,430 70
Herring, pickled	1,256,856 64	361,954 00
Salmon, pickled	330,717 00	79,386 00
Other fish, pickled	283,328 25	69,953 06
Dried and smoked salmon	19,019 00	728 43
Dried and smoked herring	247,628 02	78,048 12
Other fish, smoked and dried	1,138,501 13	180,853 68
Whale and other fish oil	562,339 00	112,467 80
	7,195,630 42	1,663,821 78

Question Second.—"What number of barrels, &c., of fish have been taken, as nearly as can be ascertained, within the three-mile limit, under the treaty, excluding the Magdalen Islands, the Labrador Coast, and that part of Newfoundland which we were entitled to fish before the treaty?"

The total catch of mackerel by United States vessels in the Gulf of Saint Lawrence is as follows, the statement for each year ending December 20:

Year.	Barrels.
1873	72,911
1874	56,770
1875	19,864
1876	10,000+
1877	8,400+
1878	61,923
	229,868

(Note.—The statement for the first three years is taken from the Canadian official reports; that for 1876 and 1877 from the testimony of experts before the Halifax commission; that for 1878 from the estimate of the Boston Fish Bureau.)

The quantity taken within three miles of the shores opened up by the treaty was estimated by the Canadian witnesses at Halifax to be at least one-half, while by the skippers of the American vessels directly engaged in this fishery it was considered to fall below one-eighth. Compromising between these two estimates, we will consider it to be one-fourth, and that this far exceeds the real amount is shown by the figures for 1878; in this case one-fourth of the total catch amounts to 15,480 barrels, while the real amount as indicated by the affidavits of the skippers of the United States fleet cannot be greater than 10,000 barrels.

Proceeding on the supposition that one-fourth of the total catch is procured within the three-mile limit, the following result is obtained:

Year.	Barrels.
1873	19,803
1874	14,148
1875	4,966
1876	2,500
1877	2,100
1878	15,480
	58,997

In estimating the value of this catch two sets of results are obtained: one by assuming the price to be $3.75 per barrel, which is the amount for which, according to Canadian experts, mackerel are sold, salted and packed, on the shores of the Gulf of Saint Lawrence; another, by taking the value to be $10, the average wholesale price in Boston market, assumed by the Halifax commission.

Year.	Value at $3.75.	Value at $10.
1873	$74,261 25	$198,030 00
1874	53,055 00	141,480 00
1875	18,622 50	49,660 00
1876	9,375 00	25,000 00
1877	7,875 00	21,000 00
1878	58,050 00	154,800 00
	221,238 75	589,970 00

Question third.—"What is the market value, gross, of all the fish so taken?"

The answer to this will be found in the summation of the last column of figures in the answer to the preceding question.

It should be stated, however, that the amount there mentioned—$589,970—far exceeds the actual value of the fish, including (as well the cost of the barrels) salt, and packing. The summation of the first column, that is, $221,238, represents more nearly the real value of the fish.

The price of mackerel is so variable with season and with the quality of the fish that it is difficult to fix upon any standard.

The quotations of the Gloucester fish market for the week ending January 9, 1879, are as follows:

No. 1 from "bay"	$11 to $14
No. 1 from "shore"	15 to 20
No. 2	5 to 7
No. 3	3 to 4

The reports of inspectors for 1878 showing the quantity of each quality inspected have not yet been received, and it is necessary to deduce the average price from the returns of the preceding year; this has been done with reference to the scale of prices just referred to, and the result shows that the market value of the fish caught that year, packed in barrels and branded, did not exceed $6; from this it is certainly allowable to subtract $2 per barrel, the inspection fee for packing and branding. There now remains a price of $4, the value of the fish delivered at the wharf, no account being taken of the cost of catching, cleaning, salting, and transportation.

Question Fourth.—"What is the cost of fishing, curing, and transporting the same to market, showing thereby the net gain or loss in the transaction? This last item, no doubt, should be taken in connection with the catch of fish exterior to the line, instead of charging the whole outfit, risk, &c., to one part of the fishing business alone."

In reply, I quote from a letter received from Captain F. J. Babson, collector of customs, for Gloucester, Massachusetts:

"The past year has been an extremely favorable one for the in-shore mackerel fishery in the Gulf of Saint Lawrence. I forward to the honorable Secretary of the Treasury to-day one hundred and twenty affidavits of the masters of vessels which were in the Gulf of Saint Lawrence this year from Gloucester. From these it appears that the entire catch in those waters of 120 vessels, averaging 65 tons each manned by 1,625 men, and absent, on average, three months each, was 30,448 barrels of mackerel of all kinds, worth, exclusive of salt, barrels, packing, and inspection, $137,016; of the 30,448 barrels, 8,750 barrels were taken within three miles of the shores of the Dominion. Their value, as sworn to by the masters, is $37,146. The cost to the American owners and operative fishermen to produce these mackerel is as follows for each vessel:

"Owners' or fitters' expenses:	
Charter or use of vessel, three months	$300
Provisions for twelve men, three months	400
Fifty barrels of slivered menhaden for bait	200
Insurance, three months	50
"Fishermen's wages:	
Twelve men, three months each, at $20	720
	1,670
"Recapitulation:	
One hundred and twenty vessels, at $1,670 each	$200,400
Thirty thousand four hundred and forty-eight barrels of mackerel, average value $4.50	137,016
Actual loss on Gulf of Saint Lawrence mackereling	63,384

"Of the American vessels usually in the Gulf of Saint Lawrence for mackerel, three-fourths are from Gloucester. I am decidedly of the opinion that 10,000 barrels will cover all that has been taken by American vessels within the three-mile limit this season. If the mackerel fishery were our only dependence it would ruin all engaged in it."

Another example of the lack of success in the mackerel fisheries of the past season may be found in the advertising columns of the Massachusetts papers, which announce for sale, January 22, eighteen fishing-schooners belonging to the port of Provincetown, with their entire outfit of mackerel-seines and seine-boats. These make up more than one-fourth of the entire Provincetown mackerel fleet; Provincetown being second to Gloucester in extent of its mackerel fleet.

Question fifth.—"What is the amount and value of fish taken in American waters within the three-mile line, during the same period, north of latitude 39, and whether British fishermen have availed themselves to any, and, if so, to what extent of this American fishery?"

1. The estimated amount of mackerel taken in American waters is shown in the following table:

Year.	Barrels.	Value.
1873	137,428	$1,374,280
1874	238,128	2,381,280
1875	123,613	1,236,130
1876	247,296	2,472,960
1877	175,685	1,756,850
1878	134,545	1,345,450
	1,056,697	10,566,970

2. There is no evidence to show that any Canadian fishermen have availed themselves to any considerable extent of the privilege to fish on the coast of the United States.

DATE OF THE TREATY OF WASHINGTON.

Proclamation of the ratification of the treaty of Washington was made by President Grant July 4, 1871. (U. S. Statutes at Large, volume XVII, 1871-'73, pages 863-877.)

In the circular dated April 1, 1873, collectors of customs were informed that the treaty of Washington would go into operation July 1, 1873, and it is with reference to that date that the entire proceedings of the Halifax commission were conducted.

COMPARISON OF THE VALUES OF THE MARINE FISHERIES OF THE DOMINION OF CANADA AND OF THE ATLANTIC STATES, NORTH OF THE THIRTY-NINTH PARALLEL.

Sea fisheries of the Dominion in 1876—reduced from the report of the commissioner of marine fisheries.

Kinds of fish.	Quantities.	Value.
Codfish	257,052,756	$4,128,100 25
Herrings, pickled	83,715,900	1,632,019 00
Herrings, smoked	4,118,625	137,287 50
Mackerel	25,078,060	997,687 00
Haddock	45,335,892	906,121 00
Ling	386,064	500,745 00
Pollock	14,401,800	168,021 00
Hake	21,969,600	256,312 00
Halibut	3,153,300	61,968 00
Alewives	5,500,000	96,250 00
Sardines	366,100	9,152 50
	461,078,097	8,418,663 25

Length of Dominion coast-line, in miles	2,865
Yield to mile of coast-line, in pounds	160,934
Yield to mile of coast-line, in dollars	$2,938 10

Total value of Dominion fisheries for 1876:

Sea fisheries	$8,418,663 25
River fisheries	1,290,271 52
Miscellaneous fisheries	1,384,715 37
	11,093,650 14

(Note.—The weights of the fish are reduced to quantities in pounds as fresh fish.)

Sea fisheries of the North Atlantic States in 1876—statistics prepared for the Halifax commission, and which it is believed will fall far below those of 1878, when the returns for this year, which are much more complete, shall be collated.

Kinds of fish.	Quantities.	Values.
Flounders and flat-fish	1,827,000	$106,620
Halibut	22,025,000	1,546,240
Cod	214,321,700	4,825,540
Tom-cod	100,000	5,500
Cunner	250,000	10,000
Tautog	615,550	70,788
Mackerel	41,728,900	2,375,262
Spanish mackerel	105,000	28,785
Bonito	2,200,000	143,000
Pompano	5,000	4,000
Butter-fish and white perch	50,000	3,000
Sea-robbins	90,000	2,250
Squeteague	1,727,600	138,208
King-fish	10,000	2,000
Spot and croaker	75,000	5,625
Sheepshead	75,000	13,125
Scup	7,760,000	504,400
Sea-bass	598,500	74,812
Striped bass	123,200	21,560
Blue fish	7,068,000	424,080
Smelt	400,000	50,000
Menhaden	703,746,500	1,657,790
Eels	(250,000) 75,000	(37,500) 5,625
Sturgeon	3,770,200	235,637
Sea-shad	40,100	8,020
Salmon	7,385,000	55,387
Herring	27,933,500	507,977
	1,045,855,750	10,030,821

Length of coast-line, in miles	1,112
Yield to mile of coast-line, in pounds	940,510
Yield to mile of coast-line, in dollars	$11,718
Estimated value of all fisheries of the United States	$75,278,829

Legislative, etc., Appropriation Bill.

The Constitution in its words is plain and intelligible, and is meant for the homebred, unsophisticated understandings of our fellow-citizens.—*Dallas, in defense of the Constitution.*

The Constitution of the United States is a written instrument; a recorded fundamental law; it is a bond, and the only bond of the Union of these States; it is all that gives us a national character.—*Daniel Webster.*

SPEECH OF HON. E. G. LAPHAM,

OF NEW YORK,

IN THE HOUSE OF REPRESENTATIVES,

Wednesday, April 23, 1879.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. No. 2) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes—

Mr. LAPHAM said:

Mr. CHAIRMAN: You were a competitor in the democratic caucus for the high honor of being selected as the presiding officer of this House. You received a generous support. On the occasion of a serenade an evening or two afterward you took occasion to say, in substance, that you coveted the honor, as the representative of a section, with a view of showing to the American people with what fairness and fidelity the people of that section were disposed to conduct the affairs of the Government in the future. You sought it, in other words, as a means of dispelling the prejudices supposed to exist in the minds of the people of the North against the people of your section.

Subsequently to this, before any bill was introduced in the House, and on the 26th of March last, only eight days after each of us had taken an oath to discharge the duties of the office on which he was about to enter according to the best of his ability, a joint democratic caucus was held, at which it was unanimously agreed that the Army bill should be reported as it passed the House at the last session, and that the legislative, executive, and judicial appropriation bill should be framed in accordance with the bill now under consideration. I quote from the Washington Post, the organ of the party, the following:

THE WORK MAPPED OUT—SATISFACTORY RESULT OF THE CAUCUS YESTERDAY. HARMONY AND DETERMINATION IN THE DEMOCRATIC RANKS—THE APPROPRIATION BILLS TO BE INTRODUCED AND PASSED AS BEFORE—NO MORE ILLEGAL FEDERAL INTERFERENCE IN ELECTIONS.

The joint democratic caucus yesterday was attended by nearly every Senator and Representative of that party, and the harmony was such as to almost render the proceedings monotonous.

* * * * * * *

In the shape adopted by the caucus, the democrats will stand by the repeal until the last, and if Hayes vetoes, then the appropriation bills will fail again. The repeal will sweep out all power to appoint chief supervisors and marshals, and in order to make the act cover all possible laws, it is provided that all laws and parts of laws, and all sections and parts of sections, authorizing the appointment of any supervisors or marshals, beyond the two described above, are repealed.

On the next day (March 27) the gentleman from Illinois [Mr. SPARKS] introduced the Army appropriation bill, of which three hundred copies had been printed without the order of the House and in precise conformity to the determination of the caucus.

In the course of the discussion upon that bill, you, Mr. Chairman, in an elaborate speech, defined more distinctly not only the views of your section but the purposes of the democracy upon their advent to power in both Houses of Congress. I quote from the speech as reported in the RECORD:

I am willing, and those with whom I stand are willing, to accept this issue, and we go further, we tender it. We are the ones to make the issue and we are ready for you to accept it. Planting ourselves upon this broad ground, we welcome controversy. We seek no quarrel with you, but for the first time in eighteen years past the democracy are back in power in both branches of this Legislature, and she proposes to signalize her return to power; she proposes to celebrate her recovery of her long-lost heritage by tearing off these degrading badges of servitude and destroying the machinery of a corrupt and partisan legislation.

We do not intend to stop until we have stricken the last vestige of your war measures from the statute-book, which, like these, were born of the passions incident to civil strife and looked to the abridgement of the liberty of the citizen.

We demand an untrammeled election; no supervising of the ballot by the Army. Free, absolutely free right to the citizen in the deposit of his ballot as a condition precedent to the passage of your bills.

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Now, sir, the issue is laid down, the gage of battle is delivered. Lift it when you please; we are willing to appeal to that sovereign arbiter that the gentleman so handsomely lauded, the American people, to decide between us.

Standing upon such grounds, we intend to deny to the President of this Republic the right to exercise such unconstitutional power. We do not mean to pitch this contest upon the ground of objection to him who happens, if not by the grace of God yet by the run of luck, to be administering that office.

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I do not mean to issue a threat. Unlike the gentleman from Ohio, I disclaim any authority to threaten. But I do mean to say that it is my deliberate conviction that there is not to be found in this majority a single man who will ever consent to abandon one jot or tittle of the faith that is in him. He cannot surrender if he would. I beg you to believe he will not be coerced by threats nor intimidated by parade of power. He must stand upon his conviction, and there we will all stand. He who dallies is a dastard, and he who doubts is damned.

Mr. Chairman, this is bold language. One would suppose from reading or hearing it that the democratic party had been driven from power by an act or acts of tyranny, and that its expulsion from power by such means had been followed by like tyrannous acts, which upon its reascendancy must be obliterated to bring back the administration of affairs to a wholesome and endurable standard.

Why, Mr. Chairman, did you stop midway? Why not demand the obliteration of all the changes incident to the war? Why not declare, as your party did in substance in 1868, that the constitutional amendments and reconstruction acts deserve to be trampled under foot and disregarded as so many nullities? Such are the sentiments of your section, such the attitude of your party.

Your people say that the proclamation of emancipation was in violation of the Constitution, and that the amendment to the Constitution forever abolishing slavery was forced upon them while they were unrepresented in Congress, and in violation of the Constitution of the United States.

Mr. Chairman, in order to appreciate the force and effect of the demands thus made it will not be out of place to recur briefly to the exit of the democratic party from power and to the history of the times during which the "degrading badges of servitude" now to be obliterated were registered in the Constitution and placed upon the statute-book of the nation.

The democratic party South openly declared, prior to the presidential election in 1860, that the election of a sectional President was just cause for a dissolution of the Union. By a sectional President they meant one residing in Illinois instead of Virginia or Kentucky. They refused to take counsel of their reason. It was in vain that the honorable gentleman from Georgia [Mr. STEPHENS] warned them against the dangerous heresy of making the constitutional election of a President the pretext for the withdrawal of the States about to secede. It is true they received encouragement from democrats of the North. Mr. Tilden, as early as October, 1860, addressed his remarkable letter to Judge Kent, in which, for the comfort of those who then threatened the destruction of the Union and are now clamoring for his candidacy in 1880, he said:

The single, slender, conventional tie which holds the States in confederation has no strength compared with the compacted, intertwining fabrics which bind the atoms of human society into one formation of national growth.

The masters of political science who constructed our system preserved the State governments as bulwarks for the freedom of individuals and localities against oppression from centralized power. They recognized no right of constitutional secession, but they left revolution organized when it should be demanded by the public opinion of a State; left it with power to snap the tie of confederation as a nation might break a treaty, and to repel coercion as a nation might repel invasion.

This bold and revolutionary avowal received the indorsement of the Attorney-General of the United States, who was a democrat of the ultra type. It was embodied by President Buchanan in his last annual message to the Congress in December, 1860. Rebellion, secession, and treason, thus indorsed by the sanction of the highest authority, invited to the contest by the honeyed phrase that the "Government had no power to coerce a State," were emboldened to the conflict, and in less than six weeks after the inauguration of President Lincoln actual war was levied against the Government of the United States by firing upon the flag at Fort Sumter. Such was the exit of the democracy from power.

The republican party encountered all this careful and well-matured

preparation for a contest with national authority in the morning of its entering upon that career of imperishable glory and success which is now stigmatized by so many degrading epithets by those who are about to "signalize their return to power." The democracy left it the inheritance of an empty Treasury, a debased credit, an impending gigantic civil war. These were followed by the early recognition of the belligerency of the confederates by the government of Great Britain and the suspension of specie payments by the State banks, the only agencies for a paper circulation then existing. Grappling with all these obstacles the republican party has been able, nevertheless, to prosecute the war to a successful termination. It has so maintained the credit of the nation that instead of selling our bonds bearing a rate of interest at 6 per cent. at the ruinous rate of seventy-eight cents on the dollar, in time of peace, without a large debt upon our hands, as was done in 1860, we have in the last two weeks disposed of two hundred millions of bonds bearing only 4 per cent. interest at a premium, and they are now in demand in the money markets of the world.

During the last seventeen years, notwithstanding all the wastes of the war, our products are largely increased; our exports have multiplied almost beyond comparison; the facilities by railroad and telegrapn are unexampled; our material progress has been without a parallel. Let me select the city in which we are now assembled as an example. The sand-banks and mole-hills found here in 1861 have given way to well-graded streets, to parks adorned with modern ornamentation and improvement, to palatial residences, and all the comforts and enjoyments of social and cosmopolitan life. This is but a type of what has been going on all over the country. I challenge history for an example which will compare with the financial achievements of the last seventeen years.

These are not the fruits of misgovernment and bad administration. On the contrary, they are the legitimate results of a wise and well developed policy, and they point from the past to a future of unexampled greatness and prosperity for the nation. It is true there has been stagnation in business and a want of confidence in commercial enterprises since the collapse of 1873. These results were the unavoidable consequences of the large issue of paper money as one of the necessities of the war; an issue not demanded or required for commercial or business purposes, but largely in excess of any such demand, and only to be justified and upheld upon the plea of necessity to maintain the existence of the nation. The reaction which came in 1873 was inevitable. It was foretold, as if by the pen of prophecy, in the language of the last democratic President of the United States. He said:

> The evils of a redundant paper circulation are now manifest to every eye. It alternately raises and sinks the value of every man's property. It makes a beggar of the man to-morrow who is indulging in dreams of wealth to-day. It converts the business of society into a mere lottery, while those who distribute the prizes are wholly irresponsible to the people. When collapse comes, as it must, it casts laborers out of employment, crushes manufactures and merchants, and ruins thousands of honest and industrious citizens.

As a fruit of the unrest thus created the so-called democracy has for a time obtained control of this House and the Senate by a small majority in each, and is "signalizing its return to power" not only by demanding that the fruits and lessons of the war shall be cast aside, but that the executive branch of the Government shall be coerced into submission to the decree of a party caucus, as carried out in the action of the two Houses.

Mr. Chairman, the threat which is contained in the quotation I have made from your party organ and from your speech on the Army bill can admit of no other interpretation. The executive must be compelled to yield to the legislative branch of the Government in all cases where they may differ, or there shall be no appropriations for ordinary and necessary expenses of conducting its affairs.

It was stated by an able and prominent member of the present majority near the close of the last session that we were probably entering upon a contest which, like that between the commons and Crown in Great Britain, might last for two centuries. Gentlemen advancing such sentiments seem to have forgotten that the people, in the modes provided by the Constitution, decide every four years upon the measures they desire to be carried out in the administration of the Government. They seem to forget, too, that it is not to this House or the Senate or both that the people look for their ultimate security against unwise, reckless, or partisan legislation, but to the executive branch of the Government, the incumbent of which is the representative of all the people, while you and I, Mr. Chairman, are the representatives of an inconsiderable portion of the people. It is the threatened invasion of the prerogatives and duty of the Executive which constitutes the most alarming feature of the caucus policy of the party now exulting in its return to its "long-lost heritage." This revolutionary policy it was early foreseen might be attempted in the madness of party strife, and we are not without warnings which should not go unheeded. I will read for the information of the House that contained in the Farewell Address of President Washington. Upon this subject he said:

> It is important, likewise, that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the increase of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of the government, a real despotism.
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> The necessity of reciprocal checks in the exercise of political power, by dividing and distributing into different depositaries and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments, ancient and modern; some of them in our own country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanennt evil, any partial or transient benefit which the use can at any time yield.

Mr. Chairman, I quote also an extract from the protest of President Jackson against the alleged unconstitutional action of the Senate of the United States in adopting the resolution of censure upon him for having assumed power not granted by the Constitution but subversive of the same. He said:

> The resolution of the Senate, as originally framed and as passed if it refers to these acts presupposes a right in that body to interfere with the exercise of executive power. If the principle be once admitted, it is not difficult to perceive where it may end. If, by a mere denunciation like this resolution, the President should ever be induced to act in a matter of official duty, contrary to the honest convictions of his own mind, in compliance with the wishes of the Senate, the constitutional independence of the executive department would be as effectually destroyed and its power as effectually transferred to the Senate as if that end had been accomplished by an amendment of the Constitution. But if the Senate have a right to interfere with the executive powers, they have also the right to make that interference effective; and if the assertion of the power implied in the resolution be silently acquiesced in we may reasonably apprehend that it will be followed at some future day by an attempt at actual enforcement. The Senate may refuse, except on the condition that he will surrender his opinions to theirs and obey their will, to perform their own constitutional functions, to pass the necessary laws, to sanction appropriations proposed by the House of Representatives, and to confirm proper nominations made by the President.

I beg to remind the House also that this question was fully and deliberately considered by the Supreme Court of the United States in the case of Luther *vs.* Borden, growing out of the Dorr rebellion in Rhode Island, and it was then decided that when Congress is called upon to determine whether a State has a republican form of government it is the sole judge upon that question.

So when the President is called on by the Legislature of a State, or by the Governor when the Legislature is not in session, for aid to suppress insurrection, he, the President, must decide who is Governor and which the Legislature of the State. In all such cases the decision is not open to review by either of the other departments of the Government, not even by the judiciary department. Mr. Chairman, there is but one mode in which the views of the Executive can be rendered of no avail or thwarted by the action of Congress, and that is by a vote of two-thirds of the members of both Houses, as provided in the Constitution.

Every effort to accomplish the object short of the needed constitutional majority is revolutionary in its character and subversive of the Government. To repeat the warning of General Washington, already quoted, "*It is the customary weapon by which free governments are destroyed.*"

But, Mr. Chairman, the sections of the Revised Statutes which this bill proposes to repeal were in no sense a part of the war measures of the Government. They were not aimed at the States in rebellion. On the contrary, they are provisions of law relating to elections for members of the House of Representatives, enacted in 1871 and 1872, and which were suggested by a committee of the House appointed in December, 1868, to investigate the alarming frauds upon the elective franchise practised in that year in the city of New York. The committee was charged with the investigation of the "irregularities and frauds alleged to have occurred in the city and State of New York, affecting the recent election for Representatives in Congress," &c. The elaborate report and supplemental report of the committee contain a full discussion of the subject of congressional elections. I quote from the reports the following:

> As Congress is thus clothed with the high prerogative of supervising the election of Representatives, it is not only eminently proper, but it is an imperative duty, that this body should by all proper means ascertain when irregularities or fraud exist in the election of its members, so that the people, apprised of evils, may avert them in future by personal vigilance by making and enforcing proper legislative provisions in the States, and, above all, *so that Congress shall apply remedies by adequate law efficiently enforced.* If these investigations show that State laws in their structure and mode of enforcement are wholly inadequate and cannot be relied on, then the duty of *prescribing congressional safeguards to preserve the purity of the ballot for national officers is manifest.* And the investigations of the committee show that existing State laws and the mode of enforcing them are wholly inadequate to prevent these frauds, but that Congress has the power to enact laws which, if faithfully executed, will, to some extent, furnish remedies hereafter.
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> By the Constitution Congress has ample power to make regulations prescribing the "times, places, and manner of holding elections for Senators and Representatives in Congress." The evidence is submitted to the House with the deductions drawn from it all, with the measures suggested to prevent frauds in the election of Representatives in Congress, &c.

These laws having been thus enacted, it is important to learn what has been their practical operation. They were fully tried and their impracticability or efficiency subjected to a severe test in the canvass of 1876. It was one of the most exciting in all our history. Efforts to control the electoral count of States and to purchase the votes of electors for President and Vice-President are no longer secrets.

This House sent a committee to New York to inquire into the result of the election in that city. The report of the majority of the committee among other things says:

> Whatever may be said as to the right of a State to regulate in all ways such

elections, this must be said: that the administration of the laws by Commissioners Davenport, Muirhead, and Allen, the United States functionaries, and their subordinates, was eminently just and wise and conducive to a fair public expression in a presidential year of unusual excitement and great temptation.

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The committee would commend to other portions of the country and to other cities this remarkable system, developed through the agency of both local and Federal authorities acting in harmony for an honest purpose. In no portion of the world, and in no era of time, where there has been an expression of the popular will through the forms of law, has there ever been a more complete and thorough illustration of republican institutions. Whatever may have been the previous habit or conduct of elections in those cities, or howsoever they may conduct themselves in the future, this election of 1876 will stand as a monument of what good faith, honest endeavor, legal forms, and just authority may do for the protection of the electoral franchise.

From the moment the supervisors are appointed, from the moment that the lists are purged, from the moment that the applications are examined to the very last return of the popular expression, this election shows the calm mastery of prudence.

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This happy result (a free, fair, and honest election) was the consequence of cooperation between the official advisers of the city and *United States officers*. The party organizations, by their regulations and orders, made the city police one in action along with *United States marshals*.

Whether this work, which is unexampled, *should be accounted a republican work, through their Federal election law*, or the work of the local authorities and organisms, inspired by a desire for an honest vote among the people, who were especially jealous of it on account of what was occurring elsewhere, *one thing the committee must report, that it approximated as near to perfection as it was possible to do. There were no riots, no fights, no bayonets, no disturbance, no conflicts of authority, and none of the concomitants which accompany fraud and endanger free institutions.*

The people of the country owe a tribute of respect to the police of a city of more than a million, and to the *United States officers who numbered thousands, for the harmony of action between the various officers*, so as to illustrate to all the world how the imperial island city can conduct herself under great excitement in view of startling events.

Such, Mr. Chairman, is the history of the enactment of the laws now proposed to be repealed by the bill under consideration and of their successful and happy operation in a most exciting contest. A statute which has been found the agent or even a factor in working out such benign results as these should not be dispensed with. This extra session opened with the bold avowal that its repeal should be forced upon the Executive and the country as a condition of granting supplies. Such was the dictate of a caucus to its partisans; such the bold avowal of your party organ from which I have quoted, and in your speech also to which I have referred.

Mr. Chairman, these threats come from a party which eleven years ago placed itself upon record in regard to all the changes incident to the war and the emancipation of the slave by declaring, as Mr. Blair did in his Broadhead letter, dated June 30, 1868—

There is but one way to restore the Government, and that is for the President-elect to declare these acts null and void. We must have a President who will execute the will of the people by trampling in the dust the usurpations of Congress known as the reconstruction acts.

As a reward for having advanced this revolutionary doctrine on the 4th July following the democracy in national convention selected him as its candidate for Vice-President. One of the resolutions adopted by that convention reads as follows:

And we regard the reconstruction acts of Congress, as such, as usurpations, and unconstitutional, revolutionary, and void.

These are not forgotten theories. They underlie the propositions now made to coerce the executive branch of the Government to adopt and carry out the decree of a party caucus or else to refuse to make the usual appropriation for the ordinary expenses of the Government, and although, as I have shown, the sections now sought to be repealed are in no sense any part of the legislation incident to the war, their repeal is included in the demand, upon the pretext they stand in the way of a free and fair exercise of the elective franchise. What is meant by this?

Is it the freedom exercised in New York in 1868 which, as I have shown, gave birth to these enactments? In addition to the fifty or sixty thousand fraudulent votes cast in that contest upon false naturalization papers and by repeating there was false counting in the end to such an extent as to give the democracy a majority in the State. The famous secret circular in the name of Mr. Tilden, which I need not repeat, but which in substance asked a telegraph of the estimated result in each election district at the minute of closing the polls, and added—

There is, of course, an important object to be attained by a simultaneous transmission at the hour of closing the polls, but no longer waiting—

was the instrumentality by which the result was accomplished. Had the laws now proposed to be repealed been in existence then no such contrivance to cheat the honest electors of the State could have been successful, and the monstrous crimes of Tweed and his confederates, which make history blush, would have been rendered impossible of accomplishment.

Mr. Chairman, it is because these statutes stand in the way of the freedom then exercised that their repeal is now demanded in the revolutionary manner proposed. All this cry about free and fair elections and no military interference at the polls has and can have no other meaning. These statutes did secure a free and fair election in 1876, as I have shown by the testimony of a democratic committee of this House. It is another kind of freedom which is now demanded—freedom to cast as many fraudulent votes as is *possible* during election day, and to have as much fraudulent counting in the canvass as is *necessary* to secure whatever result may be desired. For this kind of freedom of the ballot a great party in the name of democracy is now clamoring. It threatens to coerce the Executive and to subvert the Government if the demand is refused.

Mr. Chairman, I rejoice with you that the issue is made. I am glad that on your advent to power in these halls you have thus "thrown down the gage of battle." I am glad the issue is thus made up. I await without anxiety and with an abiding confidence the verdict of the American people upon the issue. I know it will be such as to show they are neither "dastards" nor liable to be damned.